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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 MICHAEL MCGLONE, et al.,

4 Plaintiffs,

5 v.

11 CV 3004 (JSR)

6 CONTRACT CALLERS INC., et al.,

7 Defendants.

8 -----x  
9 New York, N.Y.  
May 20, 2015  
10:20 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge  
13 and a jury

14 APPEARANCES

15 MANDEL BHANDARI LLP  
Attorneys for Plaintiffs

16 BY: RISHI BHANDARI

ROBERT GLUNT

DONALD CONKLIN

17 -and-

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20 BY: LAWRENCE WITTELS

IRA BLANK

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(Trial resumed; jury present)

THE COURT: Good morning, ladies and gentlemen. Thank you so much for your patience. Sometimes matters come up that I have to deal with on an emergency basis, and I really appreciate it. But you could have spent the time in the morning; the Yankees lost, so there was a compensation.

All right. So plaintiff will please call your next witness.

MR. BHANDARI: Thank you, your Honor. The plaintiffs call Michael McGlone.

MICHAEL MCGLONE,

the plaintiff herein,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BHANDARI:

Q. Mr. McGlone, is it possible to either move that microphone a little bit closer to you or make sure that you're closer to the microphone.

A. Yes. Can you hear me?

Q. Yes. Great. Thank you.

Good morning.

A. Good morning.

Q. And how do you know the defendants, Contract Callers Incorporated?

A. I was employed by them.

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McGlone - direct

1 Q. When were you employed by CCI?

2 A. 2009 to 2010.

3 Q. And are you a plaintiff in this case?

4 A. Yes.

5 Q. So we're going to talk about your time in CCI in a few  
6 moments, but first let's talk about your background. Where do  
7 you live?

8 A. In Oakdale, New York.

9 Q. And where is that located?

10 A. Suffolk County.

11 Q. How long have you lived in Oakdale, New York?

12 A. 21 years.

13 Q. Who do you live with, if anybody?

14 A. My wife, my children, and my mother-in-law.

15 Q. And how many children do you have?

16 A. Three.

17 Q. And how many do you live with?

18 A. Two.

19 Q. And how old are your kids?

20 A. The youngest is 21, 24, and 26.

21 Q. Before you were working at CCI, what did you generally do?  
22 What was your general occupation?

23 A. I was a carpenter.

24 Q. Excuse me?

25 A. A carpenter.

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McGlone - direct

1 Q. And so going back, all the way back to -- where did you  
2 grow up and go to high school?

3 A. Farmingdale Senior High.

4 Q. And what was the highest grade level that you achieved?

5 A. 11th.

6 Q. And then what did you do after 11th grade?

7 A. I joined the Marine Corps.

8 Q. And what was your rank when you joined the Marine Corps?

9 A. Private.

10 Q. And how long did you serve in the Marine Corps?

11 A. Six years.

12 Q. What were your general duties when you were in the Marine  
13 Corps?

14 A. I was a gas, diesel, and multi-fuel mechanic.

15 Q. And after six years, what were the circumstances of your  
16 discharge?

17 A. Honorable.

18 Q. After you finished the six years in the Marines, did you  
19 tin your education?

20 A. Yes.

21 Q. What did you do?

22 A. I got my GED.

23 Q. After you got your GED, what general field did you work in?

24 A. Carpentry, general contracting.

25 Q. And so how long have you been working in carpentry and

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McGlone - direct

1 general contracting?

2 A. 35 to 40 years.

3 Q. So immediately before you started at CCI -- and when did  
4 you start at CCI?

5 A. In 2009.

6 Q. And do you remember what month you started in?

7 A. I forget.

8 Q. If I could draw your attention to an exhibit that's been  
9 previously entered into evidence, Defendant's Exhibit SS --

10 MR. BHANDARI: Your Honor, may I approach the bench?

11 THE COURT: Yes.

12 MR. BHANDARI: Excuse me -- the witness.

13 Q. There you go. So, Mr. McGlone, do you see your name on  
14 this list?

15 A. Yes.

16 Q. According to this document, when was your start date?

17 A. 5/29/09.

18 Q. So May 19, 2009.

19 A. Correct.

20 Q. And when did you stop working at CCI?

21 A. 7/8/2010.

22 Q. So you worked there for a little bit over a year?

23 A. Yes.

24 Q. Now, going back to May of 2009, where were you working  
25 immediately before you started working at CCI?

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McGlone - direct

1 A. I was working at Local 1456.

2 Q. What is Local 1456?

3 A. It's a carpenters union.

4 Q. And you were working for a carpenters union -- do you get  
5 jobs directly from the union itself?

6 A. Correct.

7 Q. And what kinds of jobs were you working on right before  
8 CCI?

9 A. I was working on a form job.

10 Q. A what?

11 A. Form.

12 Q. Form job?

13 A. Forms.

14 Q. OK. For what company were you working for?

15 A. Enrico & Sons.

16 Q. So now let's talk about CCI. How did you hear about the  
17 job at CCI?

18 A. From my nephew.

19 Q. Who was your nephew?

20 A. Charles Loguidici.

21 Q. Loguidici. And what did Mr. Loguidici tell you about the  
22 job?

23 A. That they were going to be looking for people to do --  
24 install water meters.

25 Q. And did you apply for that job?

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McGlone - direct

1 A. Yes.

2 Q. How did you apply for it?

3 A. I went down to the Weirfield office and filled out an  
4 application.

5 Q. And when you say Weirfield, that's the street that the  
6 office is on?

7 A. Correct.

8 Q. And do you know what borough that office was in?

9 A. Ridgewood, Queens.

10 Q. So you went down to the office, and after you applied, what  
11 happened next?

12 A. Shortly after, I was told I was hired.

13 Q. And who told you that you were hired?

14 A. James Olson and Charlie Loguidici.

15 Q. And how do you know James Olson?

16 A. He is my nephew as well.

17 Q. And how are you related? How are they your nephews?

18 A. They're my sister's children.

19 Q. How many sisters do you have?

20 A. Nine.

21 Q. And how many siblings do you have in total?

22 A. 15.

23 Q. So you have a lot of nephews and nieces?

24 A. Correct.

25 Q. So after you were accepted in the job did you start working

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McGlone - direct

1 at CCI?

2 A. Yes.

3 Q. And when you started, was there a training program?

4 A. Yes.

5 Q. And what sort of things did they cover in the training  
6 program?

7 A. Some types of installations and what tools were needed, and  
8 procedures.

9 Q. And when you started in May 2009, were there people who had  
10 already been working on the job before?

11 A. Correct.

12 Q. Did you go on training, did you do any training with any of  
13 the people who were previously employed by CCI?

14 A. Well, we were paired up with somebody that was hired  
15 previously.

16 Q. Who were you paired up with, if you remember?

17 A. Ariel Peniche.

18 Q. Excuse me?

19 A. Ariel Peniche.

20 Q. He was the first person you were paired up with?

21 A. Correct.

22 Q. When you got there, were you told what the general hours  
23 were supposed to be?

24 A. Yes.

25 Q. What were the hours supposed to be?



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McGlone - direct

1 A. 8 to 4:30.

2 Q. Who told you that?

3 A. Angelo, Charlie, Jimmy.

4 Q. And did they tell what you time you were expected to come  
5 to the office?

6 A. No.

7 Q. What time would you get to the office, in the morning?

8 A. I'd be at the office generally before 7 every day.

9 Q. Why would you come so early?

10 A. Well, to get my truck prepared for the day's work.

11 Q. Did anybody tell you that you needed to get your truck  
12 prepared for the day's work before 8 a.m.?

13 A. Yes.

14 Q. Who told you that?

15 A. Angelo.

16 Q. And did he explain why?

17 A. Yeah. Because he wanted us on the road no later than 8  
18 o'clock.

19 Q. So when you first got to CCI, you did a little bit of  
20 training. Do you recall when you started going out in the  
21 field as a regular employee of CCI?

22 A. It was probably a week after I was hired.

23 Q. And when you got there, did you -- how did you keep track  
24 of your time when you were at CCI?

25 A. They had a time sheet that you had to fill out.

1 Q. Where was the time sheet located?

2 A. On the wall between the bathroom and Angelo's office, in  
3 the warehouse.

4 Q. I'd like to show you a document that's been previously  
5 entered in evidence, Exhibit 70. If we could pull up May 28th.  
6 Or actually pull up May 27th.

7 So looking at May 27, 2009, this is the first page of  
8 the sign-in sheet, you don't see your name on this page of the  
9 sign-in sheet, do you?

10 A. No, sir.

11 Q. OK. We can go to the second page. There is no second  
12 page. So May 27, 2009, you did not sign in at CCI, correct?

13 A. Correct.

14 Q. Now let's look at May 28, 2009. Do you see your name on  
15 the first page of the sign-in sheet?

16 A. No, sir.

17 Q. We can go to the second page. Do you see your name?

18 A. Yes, I do.

19 Q. And is that your signature next to your name?

20 A. Yes.

21 (Continued on next page)

22

23

24

25

1 BY MR. BHANDARI:

2 Q. And is that the last four digits of your Social Security  
3 number?

4 A. It is.

5 Q. And is that your handwriting for the Social Security number  
6 and the time in and time out?

7 A. It appears to be.

8 Q. So what time did you sign in on May 28, 2009?

9 A. 8:00.

10 Q. And what time did you actually get to the office on May 28,  
11 2009, if it was a typical day?

12 A. 7:00, quarter to seven.

13 Q. So you get to the office, to Weirfield Street, on a typical  
14 day, is that correct?

15 A. Correct.

16 Q. And what time would the gates to the office open?

17 A. At seven.

18 Q. And so between 6:45 and seven, what would you do?

19 A. I would sit in the car and listen to the radio.

20 Q. And then what would you do at 7:00?

21 A. Get out and go into the shop.

22 Q. And when you went into the shop, what would be the first  
23 thing you would do when you go in the shop?

24 A. Go into the back room and start preparing for work.

25 Q. In order to prepare for work, did you have to pick any

1 things up?

2 A. Yes.

3 Q. What are the things you had to pick up?

4 A. Meters, seal wires, seals, heads, pins for the heads.  
5 MTUs.

6 Q. And would you get a CN3?

7 A. Correct.

8 Q. What is a CN3?

9 A. It's a handheld device to program the MTUs.

10 Q. And would you pick up any documents in the morning?

11 A. A route sheet.

12 Q. After you picked up the route sheet, would you do anything  
13 after reading the route sheet?

14 A. Yeah. I'd route myself.

15 Q. And what does that mean? What does it mean to route  
16 yourself?

17 A. Well, we had, we didn't want to go over the same job that  
18 we did yesterday because generally, it could have the same jobs  
19 that you did the day prior, so you'd want to put them later on  
20 in the, in the day and try to get to some fresh work.

21 Q. Earlier you testified that you would gather meters and MTUs  
22 and other equipment, is that correct?

23 A. Correct.

24 Q. And what would you do with that equipment after you  
25 gathered it?

1 A. Load it into the car.

2 Q. And approximately how many trips would you make back and  
3 forth between your car and the office between seven and 8 a.m.  
4 on a typical day?

5 A. Five trips.

6 Q. On May 28, 2009, when you first started work, who was your  
7 partner?

8 A. Ariel Peniche.

9 Q. What time would you guys typically leave the CCI offices to  
10 start going out into the field?

11 A. About 7:30.

12 Q. And were there sometimes morning meetings when you got  
13 there?

14 A. Yes.

15 Q. Approximately how frequently were the morning meetings?

16 A. I'd say once a week, at least once a week.

17 Q. And what time would the morning meetings be scheduled for?

18 A. They would vary.

19 Q. What was the range of time that the morning meetings would  
20 be scheduled before?

21 A. It was generally before eight.

22 Q. What was the earliest that they would be? The range of  
23 times, if you can remember?

24 A. Generally, it was around 7:30.

25 Q. And were they sometimes a little later than that?

1 A. Correct.

2 Q. Were the morning meetings ever after 8:00?

3 A. They never started after eight, no.

4 Q. So the latest they would ever start would be 8:00, is that  
5 correct?

6 A. Correct.

7 Q. But sometimes they would start earlier?

8 A. Most of the time earlier.

9 Q. So going back to that time sheet that we were looking at  
10 again --

11 MR. BHANDARI: Could we put it up, Mr. Glunt.

12 Q. -- it looks here like you signed in at 8 a.m.

13 A. Correct.

14 Q. But why would you sign in at 8 a.m. if you started doing  
15 work at 7 a.m.?

16 A. Because that's what we were told to sign in.

17 Q. Who told you to do that?

18 A. Mr. Solimine, Mr. Loguidici.

19 Q. And when do you remember them telling you to do that?

20 A. When we were, during those training days.

21 Q. If we could go to May 29, the next sign-in sheet, do you  
22 see your name on the first page?

23 A. No.

24 Q. Do you see your name on the second page?

25 A. Correct.

1 Q. Now, is that your signature?

2 A. Yeah. I believe so.

3 Q. And is that your Social Security number?

4 A. Yes.

5 Q. Looking at the sign-in sheet, what time does it appear to  
6 say that you signed the time in?

7 A. It looks as though it was 7:30.

8 Q. Well, what time does it say on the top? What time do you  
9 think it intends to read?

10 A. What time on top? 8:00.

11 Q. So looking at it closely, do you believe that it says a  
12 different, that that was altered?

13 A. Oh, yes.

14 Q. Do you have a recollection as to who altered that time?

15 A. I couldn't tell you.

16 Q. Do you know why it was altered?

17 A. No.

18 Q. But on that day, did you try and sign in at 7:30?

19 A. Yes.

20 Q. But ultimately, what time were you signed in for, for May  
21 29?

22 A. 8:30 -- 8:00.

23 Q. Now, let's look at the next day that you were in the  
24 office. Now, it's not May 30. You're not on this list,  
25 correct?

1 A. No.

2 Q. So if we can go to the next exhibit, which is Exhibit 71,  
3 now, if we look at June 1 of 2009, this is the first page of  
4 Exhibit 71, you're not on this page either, correct?

5 A. No.

6 Q. On June 1, go to the next page, that's your name, but you  
7 didn't work on June 1, it appears, correct?

8 A. No.

9 Q. Let's go to June 2.

10 A. No.

11 Q. Let's take a look. June 2, are you on this list?

12 A. Oh. No.

13 Q. And did you sign in on June 2?

14 A. No.

15 Q. Now if we could go to June 3, are you on this list?

16 A. No.

17 Q. Go to the next page. Did you sign in on June 3?

18 A. Yes.

19 Q. Now, what time does it appear that you signed in?

20 A. It looks as though it's 7:00.

21 Q. And does it appear that that time was changed?

22 A. Correct.

23 Q. Why did you try and sign in at 7 a.m. on June 3?

24 A. Because that was the time I started working.

25 Q. And were you allowed to record your time for when you



1 started working on June 3?

2 A. No. I was told that it had to be 8:00.

3 Q. And so subsequent to June 3, 2009, did you ever sign in  
4 before 8:00?

5 A. Yes.

6 Q. And what would happen when you would sign in before 8:00?

7 A. I was told that there was no signing in prior to 8:00.  
8 That they didn't pay for overtime.

9 Q. And who told you that?

10 A. Mr. Solimine.

11 Q. Did you ever complain to Mr. Solimine about that?

12 A. Yes.

13 Q. What did you say to him?

14 A. I told him that it wasn't fair that we were doing work that  
15 we weren't getting paid for.

16 Q. And what was his response?

17 A. That it wasn't their policy to pay overtime.

18 Q. And did you complain to him on more than one occasion?

19 A. Yes.

20 Q. Did you complain to anybody else?

21 A. Yes.

22 Q. Who else did you complain to?

23 A. Mr. Loguidici, Mr. Olson.

24 Q. Why did you complain to Mr. Olson?

25 A. Because Mr. Olson was the second in command to Charlie.

1 Q. How did you know that?

2 A. We were told at meetings.

3 Q. And what would Mr. Olson say to you when you complained?

4 A. Just go along with it.

5 Q. What's that?

6 A. Just to go ahead and go along with it.

7 Q. But did you continue to complain after June of 2009?

8 A. Yes.

9 Q. Now, that's in the mornings. Let's talk about the  
10 afternoons. Here, on June 3, 2009, you signed out at 6:30  
11 p.m., is that correct?

12 A. Correct.

13 Q. And so when you were signing out at 6:30 p.m., what was  
14 your normal shift in terms of the days per week you were  
15 working and the hours that you were supposed to sign in and  
16 out?

17 A. We were on a four tens.

18 Q. What do you mean by four tens?

19 A. Four workdays, ten hours a day.

20 Q. So now on the days that you were doing the four workdays  
21 ten hours a day, you were supposed to sign out at 6:30 p.m.,  
22 correct?

23 A. Correct.

24 Q. And sign in at 8 a.m., correct?

25 A. Correct.

1 Q. Did you ever get back to the office after 6:30 p.m. on a  
2 day that you were doing four ten-hour days?

3 A. Regularly.

4 Q. What time would you normally get back to the office on a  
5 day when you were doing your four ten-hour shifts?

6 A. Somewheres around 6:30.

7 Q. And sometimes would you get back later?

8 A. Correct.

9 Q. And how much later would you get back sometimes?

10 A. Twenty to, quarter to.

11 Q. So how frequently would you come back, so you're saying you  
12 would come back at 6:40 or 6:45, correct?

13 A. Correct.

14 Q. In a normal week, four days would be the weeks when you  
15 were doing four ten-hour days, how frequently would you come  
16 back at 6:40 or 6:45?

17 A. Most of the time.

18 Q. And would you ever come back after 6:45?

19 A. It could happen, yes.

20 Q. And do you remember if it ever did happen?

21 A. I can't recall.

22 Q. On days when you would do five eight-hour shifts, would you  
23 ever come back after 4:30 p.m.?

24 A. Yes.

25 Q. And what would be the average time when you would come back

1 to the office when you were doing five eight-hour shifts?

2 A. Oh, somewheres at 4:30 or after 4:30.

3 Q. When you say after 4:30, what time?

4 A. Give or take five or ten minutes.

5 Q. You would normally get back at about 4:35 or 4:40, is that  
6 correct?

7 A. Correct.

8 Q. So when you would get back to the office at around 4:40 or  
9 6:40 or 6:45, in that general range where you would get back to  
10 the office, what would you do before you would leave to go  
11 home?

12 A. We would have to unload the car with the multiple meters  
13 that we replaced during the day. They would have to be recoded  
14 and put in bins, as well as any wire or any other debris that  
15 we had accumulated during the installations and throw that in  
16 the trash, of course, but that would require quite a few trips  
17 to the car.

18 Q. And approximately how long would it take you at the end of  
19 the day to do whatever you needed to do before you could leave  
20 to go home?

21 A. Twenty minutes to a half hour.

22 Q. Did you ever complain about the fact that you were leaving  
23 the office -- so what time on average would you be leaving the  
24 office on a typical day?

25 A. Five, 5:15.

1 Q. Did you ever complain that you had to sign out at 6:30 or  
2 4:30, but you were working until five or 5:15 or seven or 7:15?

3 A. Yes.

4 Q. Who did you complain to?

5 A. Charlie, Jimmy, Angelo.

6 Q. And what was their response?

7 A. That, once again, it was company policy and pretty much if  
8 I liked my job, I'd just keep doing it.

9 Q. Now, did you ever get paid for overtime?

10 A. Yes.

11 Q. What would be the circumstances under which you would get  
12 paid for overtime?

13 A. Well, somebody would have to call in and get a prior  
14 approval.

15 Q. And were there times when you were out in the field and  
16 someone called in, but you did not get approval for overtime?

17 A. Yes.

18 Q. And did you ever get approval for overtime for the time  
19 that you were checking out at the end of the day?

20 A. No.

21 Q. So what are the types of circumstances under which you  
22 would get approval for overtime?

23 A. If a pipe burst and we were out there at 4:30 and we knew  
24 we were going to be out there for a longer time, then we'd have  
25 to call in, you know, to tell them we had a problem and get the

1 overtime approved.

2 Q. And would there be other times when you were just stuck in  
3 traffic coming back to the office knowing that you would get  
4 back after 4:30?

5 A. Yes.

6 Q. Would you get overtime for that?

7 A. No.

8 Q. Now, when you got back to the office at the end of the day,  
9 who was there; who would you see there?

10 A. One of the, Angelo's guys, Ralphie or Carey, one of them.

11 Q. And would Angelo or Charlie ever be there at the end of the  
12 day?

13 A. Very random.

14 Q. Sorry. What did you say?

15 A. It was more often that they weren't there.

16 Q. Were there times when they were?

17 A. Correct.

18 Q. So were there times when you saw them in the office after 5  
19 p.m.?

20 A. Yes.

21 Q. And they saw you?

22 A. Yes.

23 Q. Did you speak to them?

24 A. Angelo would shut his door when he saw us come in; me,  
25 anyhow.

1 Q. So let's talk a little bit about your day. When you were  
2 out in the field, did you work with partners the entire time  
3 that you were there?

4 A. Yes.

5 Q. And do you remember any of your other partners?

6 A. Yes.

7 Q. Who were the other partners you had?

8 A. Joe Frische, Thomas Murphy, James Olson and Domenic  
9 Fanelli.

10 Q. And how would the partners get selected; would you pick  
11 your partner?

12 A. No.

13 Q. Who would tell you who you would be partnered with?

14 A. Charlie or Angelo.

15 Q. And did you ever have a company car?

16 A. Yes.

17 Q. Did you have a company car the entire time you were there?

18 A. No.

19 Q. When did you first get a company car, approximately how  
20 long after you started?

21 A. Oh, it had to be six months.

22 Q. And when you had a company car, did you do any maintenance  
23 on that car?

24 A. Yes.

25 Q. What did you do?

1 A. We had to change the oil, we had to wash the car once a  
2 week. You know, wiper blades, battery.

3 Q. How often would you change the oil?

4 A. I'd say every three weeks, four weeks.

5 Q. And how often would you wash the car?

6 A. Every, every week.

7 Q. And how long would it take you to wash the car?

8 A. Ten, 15 minutes, 20 minutes.

9 Q. How long would it take you to change the oil?

10 A. The same.

11 Q. And did you get, when did you do it?

12 A. On my own time.

13 Q. What do you mean by your own time?

14 A. Well, we were told before we came in on Monday that they  
15 wanted to see them clean. They would look to see if they were  
16 clean.

17 Q. And so when would you do the cleaning?

18 A. I would go to the car wash.

19 Q. On a weekend?

20 A. Yes.

21 Q. When you were working at CCI?

22 A. No. On my own time.

23 Q. So going to the days when you were working with the  
24 partners, did you eat food every single day?

25 A. No -- oh, yeah. Eat food, yes.



1 Q. And would you prepare your own food, or would you go to a  
2 restaurant or pick something up?

3 A. No. My wife would prepare my food the night before.

4 Q. What would you bring your food to work in?

5 A. I had a cooler.

6 Q. And why would you bring your food in to work every day?

7 A. Because some places it was really hard to even find a place  
8 to eat.

9 Q. And why was that important to you, that you had to eat  
10 regularly?

11 A. I take medications, I have to eat regularly.

12 Q. When you would eat the food, would you -- excuse me. Let  
13 me ask a different question. Withdrawn.

14 During the day, would you sometimes take a break for a  
15 half hour where you would do nothing else and you would just  
16 eat your meal?

17 A. Sometimes, yes.

18 Q. So in a regular week, how many times would you just take a  
19 break, not do any work, not drive from one place to another,  
20 and eat your meal?

21 A. Maybe once a week.

22 Q. And so for the other four days a week, what would you do;  
23 when would you eat your meal?

24 A. We would eat it on the run.

25 Q. What do you mean by that?

1 A. Well, we'd eat our food. I mean, I generally, it depend on  
2 whether I drove or not.

3 Q. And if you drove, what would you do?

4 A. If I drove?

5 Q. Yeah.

6 A. We'd stop in between clients' houses and wolf down my lunch  
7 and then we'd get back to work.

8 Q. And if you were with somebody else, who was driving?

9 A. Generally, I'd eat and maybe do some more routing or  
10 paperwork, try to catch up while we were on the road.

11 Q. Now let's talk about when you stopped working at CCI. What  
12 was the date when you stopped? You can look at Exhibit SS  
13 again, if you'd like.

14 A. It was 7/8, 2010.

15 Q. So July 8, 2010?

16 A. Correct.

17 Q. Do you remember how you found out that you would no longer  
18 be working for CCI?

19 A. Well, I was told by Mr. Olson and Mr. Loguidici.

20 Q. Where were you when they told you?

21 A. At Mr. Olson's house.

22 Q. And were you by yourself with those guys?

23 A. No.

24 Q. Who else was with you?

25 A. Mr. Murphy.

1 Q. And what did they, what did Mr. Olson or Mr. Loguidici tell  
2 you?

3 A. As far as?

4 Q. As far as you not working for CCI anymore.

5 A. They told me I was being laid off.

6 Q. Did they tell you why you were being laid off?

7 A. No. I couldn't get an answer to that.

8 Q. Did you ask?

9 A. Yes.

10 Q. What did you ask?

11 A. I asked what was the reason for me being picked to be laid  
12 off.

13 Q. And what was their response?

14 A. They didn't give me an answer.

15 Q. And when you were laid off, were you told that you might be  
16 able to be rehired?

17 A. Well, I just assumed that being laid off meant that you  
18 would be hired back when the job was available.

19 Q. Was Mr. Murphy hired back eventually?

20 A. Yes.

21 Q. Were you ever hired back?

22 A. No.

23 Q. Now, before you were laid off, had you spoken to  
24 Mr. Loguidici or Mr. Solimine about not getting paid for all  
25 the hours you worked?

1 A. Several times.

2 Q. And what was their response?

3 A. The same thing, that they don't pay overtime.

4 Q. All right. Just so that we can summarize and make sure  
5 we're clear on this, Mr. McGlone, in the mornings, what time  
6 would you start work?

7 A. 7:00.

8 Q. And what time would you sign in?

9 A. I signed in at eight.

10 Q. O.K. So every morning on average you worked approximately  
11 one hour where you did not get paid, is that correct?

12 A. Correct.

13 Q. In the afternoons, what time did you say that you would  
14 typically leave the CCI office, on a typical day?

15 A. Generally between five and a quarter after.

16 Q. So that would be, if we could do that, if we could just cut  
17 it right in the middle, that would be 5:07 and 30 seconds,  
18 let's just say 5:06 for the purposes of the math, that would  
19 come to a half hour, plus six minutes, and so that's .4.

20 Excuse me. That's .6. A half hour is half an hour, so that's  
21 .5 and then six minutes is one-tenth of an hour, so that's 20,  
22 correct?

23 A. Correct.

24 Q. In the afternoons, if we take it, that's .6. And then you  
25 said before how many days a week would you actually take a full

1 half hour for your meal break?

2 A. One.

3 Q. And so four days a week you would not take a full half hour  
4 for your meal break?

5 A. Correct.

6 Q. And you would eat while you were working?

7 A. Correct.

8 Q. So that's two hours, which is 120 minutes, and so that's,  
9 as we've done this math before, 24 minutes per day which comes  
10 to .4 of an hour. So 24 minutes on average would be .4. So if  
11 we add those things up, that comes to one hour in the morning,  
12 correct?

13 A. Correct.

14 Q. .6 in the afternoon?

15 A. Correct.

16 Q. .4 on average every day for the amount of lunch you weren't  
17 getting, correct?

18 A. Correct.

19 Q. And then that comes to two hours. Is that the  
20 approximate -- excuse me.

21 Is that the total unpaid hours per day that you would have  
22 on average while you were working at CCI?

23 A. Yes.

24 Q. Now let's talk about when you were laid off. You've been  
25 sitting in the court every day, correct?

1 A. Yes.

2 Q. And you heard the opening statements, is that correct?

3 A. I might have missed a little of it.

4 Q. Did you hear the defendants' counsel say that there were  
5 some mistakes being made with the prevailing wage that was  
6 first being paid on the job?

7 A. Correct.

8 Q. Now, did you hear the defendants' counsel say that CCI paid  
9 all of the employees that amount of prevailing wage subsequent?

10 A. Correct.

11 Q. Now, did you ever get paid an amount that was supposed to  
12 make you whole for the prevailing wage you did not receive at  
13 the beginning?

14 A. No.

15 Q. So while you were working there, did you eventually start  
16 getting paid the proper prevailing wage?

17 A. No.

18 Q. Do you know what the prevailing wage was supposed to be,  
19 approximately?

20 A. Approximately between 46 and 47 an hour.

21 Q. And you never got paid any of the overtime; you never got  
22 paid any overtime for any of the days, for any of the time you  
23 calculated where you would come in early, work late, and not  
24 have your lunch, correct?

25 A. No, sir.

1 Q. One other question. Did you ever sign a break sheet saying  
2 that you were taking a lunch?

3 A. I don't know what that is.

4 Q. So did you ever sign such a thing?

5 A. No.

6 MR. BHANDARI: All right. No further questions.  
7 Thank you, Mr. McGlone.

8 THE COURT: Cross-examination.

9 MR. WITTELS: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. WITTELS:

12 Q. If I understand your testimony here today, Mr. McGlone, you  
13 testified that on average you took a lunch break, a *bona fide*  
14 meal break, once a week, is that correct?

15 A. Correct.

16 MR. WITTELS: Judge, may I approach with the  
17 deposition, please.

18 THE COURT: Yes.

19 Q. Mr. McGlone, do you remember sitting in Ms. Dodson's office  
20 back in 2013 and having your deposition taken by me?

21 A. Yes, sir.

22 Q. And did you testify at that point in time under oath that  
23 you never ever took a meal break during your entire time --

24 THE COURT: Sustained. First of all, counsel, that's  
25 not the way we do it. You first put a question to him, if his

1 answer is inconsistent or arguably inconsistent with his  
2 deposition testimony. Then, having of course given a copy to  
3 the Court, which you haven't yet, you identify the page and  
4 lines that you propose to read. If plaintiffs' counsel thinks  
5 that there's no way they could be construed as inconsistent, he  
6 says the one word "objection," and I will review it. If it is  
7 arguably inconsistent, a determination that will ultimately be  
8 for the jury, but if it's arguably inconsistent and there is no  
9 objection or I overrule the objection, then you may read it.  
10 So the first thing you need to do is give me a copy of the  
11 deposition.

12 MR. WITTELS: Judge, I would be happy to do that. I  
13 think we all presubmitted as part of the pretrial submission.

14 THE COURT: That's fine and it's sitting down where  
15 your pretrial submissions are, in my office. Let's have a copy  
16 now.

17 MR. WITTELS: Judge, I don't have -- I have the  
18 original and I don't have another copy.

19 THE COURT: We'll see if there is an objection, but  
20 right now you haven't even laid the foundation, so let's start  
21 again.

22 MR. WITTELS: Thank you, Judge.

23 Q. Did you at one point say that you never took a lunch break?

24 A. I don't recall.

25 THE COURT: Page and lines.



1 Q. I'd ask you to turn to deposition page 49, line 6.

2 MR. WITTELS: Judge, would you like me to read the  
3 question I asked and him the answer?

4 THE COURT: No. I first want to find out if we're  
5 going to get a yes or no.

6 MR. BHANDARI: I think it's not inconsistent with what  
7 he just said, and I can read it.

8 THE COURT: I don't want colloquy, I told you. If you  
9 think it's not inconsistent, you say the one word "objection."

10 MR. BHANDARI: Objection. I can show you.

11 THE COURT: Let me see this. Where do you want to  
12 read from, six to where?

13 MR. WITTELS: Six to 18.

14 THE COURT: All right. I will allow that.

15 Ladies and gentlemen, you should understand a couple  
16 of things. First, before any trial, the parties get to take  
17 what they call a deposition; that is to say, they get to take  
18 the testimony of the witnesses under oath in their offices.  
19 There is no judge there, but the witness is under oath. If the  
20 witness gives testimony here that is arguably inconsistent with  
21 something said in the deposition, then the relevant parts of  
22 the deposition can be read. You first have to determine  
23 whether it really is inconsistent or not; maybe it is, maybe it  
24 isn't. If it isn't, that's the end of that. If it is  
25 inconsistent, then you have to determine whether what he said

1 at the deposition was the truth, what he says here is the  
2 truth, or whether neither is the truth. So those are all your  
3 jobs. My job is first to see whether it's arguably  
4 inconsistent. I'm making no determination whether it is  
5 inconsistent, just whether it's arguably inconsistent.

6 MR. BHANDARI: Your Honor, may I approach the bench  
7 for a moment.

8 THE COURT: No.

9 MR. BHANDARI: Is it possible to approach? I don't  
10 want to say anything in front of the jury, but can we please  
11 approach the bench.

12 (Continued on next page)

1 (At the sidebar)

2 THE COURT: Go ahead. I've got it.

3 MR. BHANDARI: I don't think it can be arguably  
4 inconsistent because it says, "Isn't it your testimony that  
5 during your employment with CCI, you never took a meal break?"  
6 He's asking is it his testimony that he never took a meal  
7 break, and he says no. That's consistent with what he just  
8 said, that he took it one day a week.

9 THE COURT: No. The "no" there is ambiguous. That's  
10 why I wanted to know what lines he was going to read. But he  
11 goes on to say:

12 "Q. And just to make sure the record is clear, your answer of  
13 no means it was your testimony that you never took such a  
14 break, correct?

15 "A. Not to my recall, no." So he clarified that the "no" meant  
16 that he never took a break.

17 MR. BHANDARI: O.K., not to his recollection.

18 THE COURT: All right.

19 MR. BHANDARI: That's fine. Thank you.

20 (Continued on next page)  
21  
22  
23  
24  
25

(In open court)

BY MR. WITTELS:

Q. Do you have the deposition in front of you?

A. Yes, sir.

Q. And on line 6, I asked you --

THE COURT: Just say question, answer, read the whole thing, and then you can ask him if that was his testimony.

BY MR. WITTELS:

Q. Line 6:

"Q. It is your testimony that during your employment with CCI, you never took a meal break?

"A. A *bona fide*?"

Line 12:

"Q. A *bona fide* meal break."

"A. No."

Line 14:

"Q. And just to make sure the record is clear, your answer of no means it is your testimony that you never took such a break, correct?"

Line 18:

"A. Not to my recall, no."

Was that your testimony back in 2013?

A. Yes.

Q. Yet you testified you were a union carpenter prior to working for CCI, is that right?

1 A. Correct.

2 Q. And during your time in the union, you had been a shop  
3 steward, correct?

4 A. Correct.

5 Q. And part of the duties, your duties as a shop steward was  
6 managing pay issues, is that right?

7 A. Managing what?

8 Q. Pay issues.

9 A. Correct.

10 Q. From almost day one, if I understand your testimony, from  
11 almost day one on the job you felt that you were not being paid  
12 correctly, correct?

13 A. Correct.

14 Q. And fair to say that you felt you were being cheated out of  
15 hours?

16 A. Correct.

17 Q. During your time at CCI, did you maintain any record of  
18 your own hours worked?

19 A. No.

20 Q. So from day one, you thought you were being cheated, but  
21 you kept no hours, no record of the actual hours you now claim  
22 you worked, correct?

23 A. Correct.

24 Q. You knew you were entitled to a meal break every day,  
25 correct?

1 A. Correct.

2 Q. And you kept no record of the times that you didn't take a  
3 meal break, correct?

4 A. Correct.

5 Q. You testified that there were times that you were allowed  
6 and took overtime, correct?

7 A. Correct.

8 Q. And you were paid for the overtime, correct?

9 A. Correct.

10 Q. Were there times during your employment with CCI that you  
11 didn't work 40 hours in a week?

12 A. I don't recall.

13 MR. WITTELS: Judge, may I approach the witness again.

14 THE COURT: Yes.

15 Q. Let me ask you to turn to Plaintiffs' Exhibit 4. Are you  
16 there?

17 A. Yes.

18 Q. And these are certified payroll records, is that correct?

19 A. Correct.

20 Q. If you'll turn to page 20 of that Exhibit 4, is that for  
21 the week of June 14 to June 20, 2009? Look across the top,  
22 perhaps; it has the dates.

23 A. Yes.

24 Q. And I apologize that I can't bring it up on the screen, but  
25 it's a Plaintiffs' Exhibit that I don't have control of. Can

1 you find your name on page 20?

2 A. Yes.

3 Q. How many hours of work were you paid for in that week?

4 A. It appears to be 31.

5 Q. 31?

6 A. Yeah.

7 MR. WITTELS: Judge, may I approach.

8 THE COURT: Yes.

9 A. Oh, hours.

10 Q. Hours. Do you see it now?

11 A. Yeah. 34.

12 Q. 34. So in that week, you worked 34 hours, correct?

13 A. Correct.

14 MR. BHANDARI: Objection.

15 Q. You were paid for 34 hours, correct?

16 A. Yes, yes.

17 Q. You don't know how many hours you worked that week, do you?

18 A. No.

19 Q. Let's turn to, same book, Exhibit 10. Are you there?

20 A. Yes.

21 Q. O.K. If you'll turn to page 74 of Exhibit 10, that is the  
22 certified payroll record for the week of December 20 through  
23 December 26, 2009, correct?

24 A. It appears so.

25 Q. Can you find your name on that page?

1 A. Yes.

2 Q. And how many hours were you paid for in that week?

3 A. In the regular hours?

4 Q. Both regular and overtime, if you earned.

5 A. O.K. 42.5.

6 Q. Total of 42.5 hours, correct?

7 A. Correct.

8 Q. And you were paid 40 hours of straight time and two and a  
9 half hours of overtime?

10 A. Correct.

11 Q. Now, if you move that book to your side a little bit and go  
12 to the next notebook and open it to Exhibit 77.

13 A. O.K.

14 Q. And if you'll turn, that's the sign-in/sign-out sheet that  
15 you testified to before, correct?

16 A. Correct.

17 Q. And it was your responsibility to sign in and sign out each  
18 day that you worked at CCI?

19 A. That's what we were told.

20 Q. If you'll turn to page 427 of that exhibit.

21 A. O.K.

22 Q. Can you find your name on the sign-in/sign-out sheet?

23 A. Yes, I can.

24 Q. How many hours did you sign in and sign out for on that  
25 day?



1 A. Nine hours.

2 Q. Nine hours. Can you turn to page 429. And tell the jury  
3 what day, what calendar day that is.

4 A. December 22, '09.

5 Q. How many hours did you sign in and sign out for?

6 A. Well, I don't know. It's --

7 Q. Is it blank?

8 A. It's written over.

9 MR. WITTELS: If I may, Judge.

10 THE COURT: Yes.

11 Q. All right. What does it appear to you on that page?

12 A. It's either 4:30 or 5:30.

13 Q. O.K. So it's either sign out at 4:30 or 5:30, correct?

14 A. Correct.

15 Q. So it's either eight and a half or nine and a half hours,  
16 correct?

17 A. Correct.

18 Q. All right. You can turn to page 431. And what day of the  
19 calendar is that?

20 A. 12/23/09.

21 Q. All right. Find your name?

22 A. Yes.

23 Q. How many hours were you signed in and out for?

24 A. It says here eight to five.

25 Q. Eight to five, so eight and a half hours, correct?

1 A. Correct.

2 Q. All right. Turn to page 433. What day of the week is  
3 that?

4 A. It's 12/24.

5 Q. And what is your sign in and sign-out time?

6 A. 8:00 to 4:30.

7 Q. So eight hours?

8 A. Correct.

9 Q. Page 435.

10 MR. BHANDARI: Objection. Mischaracterizes.

11 THE COURT: Sustained.

12 BY MR. WITTELS:

13 Q. Eight and a half hours is the time between your sign in and  
14 sign-out time?

15 A. Right.

16 Q. Turn to page 433.

17 A. I'm on 433.

18 Q. O.K. What day of the week is that?

19 A. December 24.

20 Q. And is there a sign in and sign-out time for you on that  
21 day?

22 A. Yes. That day, yes.

23 MR. BHANDARI: Objection. Asked and answered.

24 BY MR. WITTELS:

25 Q. I apologize. 435. I'm sorry. Page 435.

F5kWmcg2

McGlone - cross

1 A. Yes.

2 Q. Find your name?

3 A. Yes.

4 Q. Sign-in/sign-out time?

5 A. There is none.

6 Q. None, zero?

7 A. Yes.

8 Q. It's a holiday, Christmas Day, correct?

9 A. 12/25/09.

10 Q. Turn to 437. So you'll agree with me you didn't work on  
11 Christmas Day?

12 A. No.

13 Q. No, you don't agree with me, or you didn't work?

14 A. I didn't work.

15 Q. Turn to page 437.

16 A. O.K.

17 Q. Find your name?

18 A. Yes, I do.

19 Q. What was your sign in and sign-out time?

20 A. It says here none.

21 Q. So you didn't work on December 26, 2009, correct?

22 A. Correct.

23 Q. So in that week, you worked four days, correct? Page 427,  
24 429, 431, and 433.

25 A. Correct.

1 Q. And you worked, your sign-in/sign-out time was nine hours,  
2 nine hours, and eight and a half hours and eight and a half  
3 hours, we already went through, correct?

4 A. Yes.

5 Q. You got paid for 40 hours of straight time for that week,  
6 correct, looking back at Exhibit 10?

7 MR. BHANDARI: Which week are we talking about?

8 MR. WITTELS: December 20 through 26. Exhibit 10.

9 A. Correct.

10 Q. All right. So you got paid 40 hours straight time plus two  
11 and a half hours overtime for that week?

12 A. Correct.

13 Q. You'll agree with me that hours paid doesn't always equal  
14 hours worked, correct?

15 A. Correct.

16 Q. So during your time at CCI, there were weeks that you took  
17 vacation days, got paid for them, correct?

18 A. Correct.

19 Q. But those aren't days worked or hours worked, correct?

20 A. Correct.

21 Q. There were days that there was no work because of bad  
22 weather. Do you recall any of those?

23 A. I always went in to work.

24 Q. Was the shop ever closed because of snow or horrible  
25 weather, to your recollection?

1 A. I don't, I don't, I don't recall.

2 Q. Were there days that the shop closed early, that you  
3 recall?

4 A. I don't recall.

5 Q. Let me ask you to turn to Exhibit 12, plaintiffs' No. 12.  
6 Are you there?

7 A. Yes.

8 Q. Page 13 of Exhibit 12.

9 A. Yes.

10 Q. How many hours were you paid for in that week of February  
11 7, 2010, to February 13, 2010?

12 A. 36.

13 Q. 36 hours. Now, if I can ask you to turn to Exhibit 79,  
14 back in the other notebook.

15 A. O.K.

16 Q. Page 14 of that exhibit.

17 A. All righty.

18 Q. What's the date of that sign-in/sign-out sheet?

19 A. It says eight to 4:30.

20 Q. No. What's the date.

21 A. Oh, the date. February 8, 2010.

22 Q. All right. And your sign-in/sign-out time is, I think you  
23 already said, eight to 4:30, correct?

24 A. Correct.

25 Q. Turn to page 18.

1 A. O.K.

2 Q. The date of that sign-in/sign-out sheet?

3 A. 2/10/10.

4 Q. And how many hours were you signed in and signed out for  
5 that?

6 A. It says here eight to 12:00.

7 Q. And so did you sign yourself out at 12:00 in the afternoon?

8 A. I'd have to say yes.

9 Q. Are there other people that day that signed out at 12:00?

10 A. Yes.

11 Q. So for that day, you recorded four hours of work, correct?

12 A. Correct.

13 Q. If you'll turn to page 20 of that exhibit.

14 A. O.K.

15 Q. What's the date on that exhibit?

16 A. February 11, 2010.

17 Q. And what was your sign-in/sign-out time on that day?

18 A. It says sick day.

19 Q. So you didn't come to work that day at all, correct?

20 A. Not if I was sick.

21 Q. So on that day you worked zero hours, correct?

22 A. Correct.

23 Q. Somebody, do you know who wrote in sick day for you?

24 A. I don't know.

25 Q. Turn to page 22. What's the date of that sign-in/sign-out

1 sheet?

2 A. December 12, 2010.

3 Q. And how many hours are you signed in for that day?

4 A. Eight to 4:30.

5 Q. And if you'll turn to page 24.

6 A. O.K.

7 Q. The date of that page?

8 A. 2/13/10.

9 Q. And how many hours are you signed in for that day?

10 A. I'm not.

11 Q. None?

12 A. No.

13 Q. So zero, correct?

14 A. Correct.

15 Q. So we went through five days; you took a sick day on one,  
16 correct?

17 A. Correct.

18 Q. No time on another, correct?

19 A. Correct.

20 Q. Half a day on another?

21 MR. BHANDARI: Objection.

22 THE COURT: Overruled.

23 MR. BHANDARI: Mischaracterizing.

24 Q. Half day, eight to 12, on the third?

25 A. Correct.

1 Q. You got paid for 36 hours of work, you got paid for 36  
2 hours in that week, correct?

3 A. Correct.

4 Q. But you worked two and a half days that week, correct?

5 A. Correct.

6 Q. So you worked 20 hours, correct?

7 A. Correct.

8 Q. Are there instances where you recall signing out on a  
9 sign-out sheet indicating that you worked more than eight and a  
10 half hours a day?

11 A. Yes.

12 Q. And did you always get paid for that overtime when you  
13 worked more than eight and a half hours a day?

14 A. If it was prior approved.

15 THE COURT: Counsel, we're going to need to give the  
16 jury their midmorning break, if this is a good time.

17 MR. WITTELS: It's up to you, Judge. Fine.

18 THE COURT: O.K. Ladies and gentlemen, we'll take a  
19 15-minute break at this time and we'll resume.

20 (Jury excused)

21 THE COURT: Mr. McGlone, you can step down.

22 (Witness excused)

23 THE COURT: Counsel, I'm taking two other matters now,  
24 so you need to vacate, but you can leave your stuff there.

25 (Recess)



1 (In open court; jury present)

2 THE COURT: Counsel.

3 BY MR. WITTELS:

4 Q. Mr. McGlone, nobody at the Queens office told you to be at  
5 work at 7 o'clock, correct?

6 A. No.

7 Q. No, not correct, or no, no one told you to be there?

8 A. No, no one told me I had to be there at seven, but they  
9 told me I had to be there prior to eight.

10 Q. You were commuting from Long Island?

11 A. Correct.

12 Q. There were times that you got there at 6:45 and waited in  
13 your car and listened to music, correct?

14 A. Correct.

15 Q. Is it your testimony that your morning routine took you  
16 between a half hour and 45 minutes every day?

17 A. Not every day. But, could be, yes.

18 Q. On average, how long did it take you to load your vehicle  
19 and get your CN3 and get your paperwork?

20 A. Thinking about it yes, it could be about 45 minutes, yes.

21 Q. And the whole time you worked there, you worked a two-man  
22 team?

23 A. Yes.

24 Q. So it took two men 45 minutes to get their CN3, get their  
25 paperwork, and get their meters and supplies for the day and

1 load up the truck?

2 A. Yes.

3 Q. After you got back, I believe your testimony was it took  
4 you 20 to 30 minutes to unload your truck, and to turn in the  
5 paperwork and your CN3?

6 A. Correct.

7 Q. That again is a two-man team, correct?

8 A. Correct.

9 Q. You're both unloading, correct?

10 A. No.

11 Q. So only one of you is doing the work?

12 A. No, we were both doing separate things.

13 Q. What would you normally do?

14 A. I would load the truck, do the meters, make sure we had all  
15 the necessary things to do the job.

16 Q. What would your partner do?

17 A. He would be taking care of our paperwork we couldn't  
18 possibly do during the day.

19 Q. So it is your testimony that you couldn't keep up with the  
20 paperwork during your daily routine?

21 A. Not with the schedule they gave us.

22 Q. Your testimony that you were told CCI didn't pay overtime,  
23 that's your testimony, that's what you were told by Charlie and  
24 Jimmy and Angelo, right?

25 A. Correct.

1 Q. But they did pay overtime, correct?

2 A. Only if you called in first.

3 Q. Called it in, got authorized, they paid you for the time  
4 that you were out in the field?

5 A. Correct.

6 Q. Where on -- I think you said Suffolk County?

7 A. Yes.

8 Q. How long was your commute back and forth each day?

9 A. From my house to work?

10 Q. Yes.

11 A. About 40 minutes.

12 Q. How many miles?

13 A. I couldn't tell you.

14 Q. When you did get issued a company vehicle, you took the  
15 vehicle home at night and brought it back in the morning,  
16 correct?

17 A. Correct.

18 Q. I think you testified that you were told you were no longer  
19 employed while at your cousin's house by your nephew, correct?

20 A. Correct.

21 Q. Mr. Wertz didn't notify you that you were no longer  
22 employed by CCI?

23 A. No.

24 Q. And Mr. Maguire didn't tell you that, correct?

25 A. No.

1 Q. Neither one of them hired or interviewed you, correct?

2 A. No.

3 Q. No, not correct, or no, they didn't hire or interview you?

4 A. No, they didn't personally hire me.

5 Q. Did they assign you your route during the day?

6 A. No.

7 Q. Who did that?

8 A. Who assigned it? I don't know. But I was given to by  
9 Rafael Soto or whoever was working for Angelo that day.

10 Q. So somebody in the warehouse or in the office would hand  
11 you a CN3?

12 A. Correct.

13 Q. This was a prevailing wage rate job, correct?

14 A. Yes.

15 Q. Wages were set by the City of New York.

16 A. I don't know who set them.

17 Q. Did you ever receive a direct command from either Mr. Wertz  
18 or Mr. Maguire?

19 A. No.

20 Q. Did you ever receive a direct instruction from Mr. Wertz or  
21 Mr. Maguire?

22 A. No.

23 Q. Who is Mr. Maguire?

24 A. Charlie's friend's brother.

25 Q. Do you know what his role in the company is?

1 A. Vice president.

2 Q. Do you know what he's in charge of?

3 A. No.

4 Q. Who is Mr. Wertz?

5 A. I believe he's the CEO.

6 Q. Any other titles or anything else that you know of?

7 A. Not that I am aware of.

8 Q. Is he an owner of the company?

9 A. Yes.

10 Q. You were asked about whether you got a payment at any time  
11 to make up for a missed calculation. I believe your testimony  
12 was you did not receive any such payment, correct?

13 A. Correct.

14 Q. Did Angelo ever discuss a payment like that with you?

15 A. Yes.

16 Q. Did you refuse to sign a receipt agreeing to the amount  
17 that he calculated was due to you?

18 A. Yes.

19 Q. That's why you weren't given the check, correct?

20 A. Three times.

21 Q. So on three separate occasions, you refused and therefore  
22 weren't paid?

23 MR. BHANDARI: Objection. Calls for speculation.

24 A. No.

25 THE COURT: Hold on there is an objection. Ground?

1 MR. BHANDARI: Speculation, the "therefore."

2 THE COURT: Sustained.

3 Q. Three times you refused to sign the document requesting  
4 your signature regarding those benefits?

5 A. Correct.

6 Q. And you were not paid that money.

7 A. Correct.

8 MR. WITTELS: That's all. No further, Judge.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. BHANDARI:

12 Q. Mr. McGlone, do you recall being asked some questions about  
13 the certified payroll during Christmas week of 2009?

14 A. Yes.

15 Q. You got paid for Christmas Day, even though you didn't work  
16 on Christmas Day, correct?

17 A. Correct.

18 Q. Do you have an understanding of why you were paid on  
19 Christmas Day even though you didn't work on Christmas Day?

20 A. Yes, because I had sick and vacation time.

21 Q. What do you mean you had sick and vacation time?

22 A. I had sick time that they had owed me.

23 Q. When you say they owed you, why did they owe it to you?

24 A. I worked for it.

25 MR. BHANDARI: I'd like to have marked as Plaintiff's

1 Exhibit 128 a document marked for identification, your Honor.  
2 May I approach the bench and give it to the witness?

3 THE COURT: All right.

4 MR. BHANDARI: Here is a copy for Mr. Wittels.

5 Q. So before I ask you a question about this document,  
6 Mr. McGlone, you said you had worked for vacation time and sick  
7 time, correct?

8 A. Correct.

9 Q. Christmas Day would have been a vacation time or would it  
10 have been sick time?

11 A. It would have been vacation.

12 Q. Then do you remember being asked some questions about  
13 February of 2010 where you were paid for days that you did not  
14 work?

15 A. Correct.

16 Q. For those two days during that week where did you not work  
17 but you were paid, what was the reason why you were paid for  
18 those days even though you didn't work them?

19 A. I don't recall.

20 Q. Do you remember seeing the sheets?

21 A. Yes.

22 Q. They say that they were sick days?

23 A. Yes.

24 Q. So you recall seeing that, correct, during Mr. Wittels'  
25 testimony?

1 A. Yes.

2 Q. So now, looking at this document, which is Plaintiff's  
3 Exhibit 128.

4 MR. BHANDARI: Your Honor, I'd like to have this  
5 introduced into evidence as an admission of CCI.

6 THE COURT: Any objection?

7 MR. WITTELS: As a what?

8 MR. BHANDARI: As a party admission.

9 MR. WITTELS: Well, Judge, I would object as a party  
10 admission. I don't know if --

11 THE COURT: Well, what he means, he is just flagging  
12 for you any objection on a hearsay ground.

13 MR. BHANDARI: Yes.

14 MR. WITTELS: I would object.

15 THE COURT: Ground?

16 MR. WITTELS: Hearsay and no foundation by this  
17 witness.

18 THE COURT: Are you challenging the authenticity?

19 MR. WITTELS: I'm challenging --

20 THE COURT: Excuse me. Answer my question, counsel.

21 MR. WITTELS: No, I'm not challenging the  
22 authenticity.

23 THE COURT: Okay. Then the objection is overruled.  
24 128 is received.

25 (Plaintiff's Exhibit 128 received in evidence)



1 MR. BHANDARI: May I publish to the jury? I have  
2 copies for the jury as well.

3 THE COURT: Yes.

4 MR. BHANDARI: There might be more than eight copies  
5 here, so feel free to put them at the end.

6 Q. While this is being passed to the jury, Mr. McGlone, can  
7 you go to the second page of this document which is Bate  
8 stamped 43. Go back to the first page.

9 Do you recognize this document, Mr. McGlone?

10 A. No.

11 Q. It is a memorandum from CCI, correct?

12 MR. WITTELS: Judge, I'll object since he indicates he  
13 does not, there is no foundation. He does not recognize the  
14 document.

15 THE COURT: Well, the objection to the immediate  
16 question is sustained.

17 Q. Looking at this document, is the date on this document  
18 July 28, 2009?

19 A. Correct.

20 Q. Were you working at CCI at that time?

21 A. Yes.

22 Q. Were you an employee of Contract Callers Inc. at that time?

23 A. Yes.

24 Q. So the field of this document says two employees of  
25 Contract Callers Inc. New York MIU project. Do you know what

1 the New York MIU project was?

2 A. No.

3 Q. Do you know who Milton Simmons was?

4 A. Yes, I know him.

5 Q. Who is Milton Simmons?

6 A. I believe, like it says here, he was the human resources  
7 manager.

8 Q. Mr. McGlone, I am going to ask you just read the first  
9 paragraph of this document, if you could. Read it to yourself.

10 (Pause)

11 A. Okay.

12 Q. Have you finished reading it?

13 A. The first sentence?

14 Q. Sorry, the first paragraph. And look up when you're done.

15 A. Correct.

16 Q. Does this refresh your recollection, were you working on  
17 the MIU project?

18 A. Yes.

19 Q. The MIU project was the meter infrastructure upgrade  
20 project, is that correct?

21 A. Yes.

22 Q. Looking at this document, does it refresh your recollection  
23 on whether or not you were given a document by CCI about what  
24 the supplemental benefits you were receiving from CCI were?

25 A. Yes.

1 MR. WITTELS: Objection. Leading, Judge.

2 THE COURT: Sustained.

3 Q. What are supplemental benefits?

4 A. Vacation, sick time, medical.

5 Q. If you look at the second page of this document, what does  
6 this document say that the hourly wage was?

7 A. 31.64.

8 Q. What was the supplemental?

9 A. 14.65.

10 Q. Were you to receive that entire 14.65?

11 A. Yes.

12 Q. Did CCI provide you with certain benefits which they  
13 deducted out of that 14.65?

14 A. Not me, but other people, yes.

15 Q. If you look at this, do you see the annual supplemental  
16 benefits provided by CCI?

17 A. Yes.

18 Q. What are the supplemental benefits that were provided by  
19 CCI?

20 A. Holidays.

21 Q. Paid holidays?

22 A. Yes. Vacation and sick.

23 Q. How much did you pay out of every hour of supplemental  
24 benefits for the paid holidays you received?

25 A. 97 cents.

1 Q. So for every hour you worked for CCI, they deducted how  
2 much from your pay for paid holidays?

3 A. 97 cents.

4 Q. For every hour you worked for CCI, they deducted how much  
5 from your pay for sick days?

6 A. 61 cents.

7 Q. How many sick days were you supposed to get each year?

8 A. Five.

9 Q. So in February of 2010, when you saw the certified payroll  
10 sheets that Mr. Wittels showed you, had you paid for those sick  
11 days?

12 A. Correct.

13 MR. WITTELS: Objection.

14 THE COURT: Was there an objection?

15 MR. WITTELS: There is, Judge.

16 THE COURT: Sustained.

17 Q. How many sick days did you use in February 2010?

18 A. I believe it was three.

19 Q. Was it three or --

20 THE COURT: Counsel.

21 MR. BHANDARI: Sorry.

22 Q. Going back, if we can look at the certified payroll for --  
23 excuse me.

24 If we can look at the time sheet for February of 2010  
25 which I believe is Exhibit 12. Can we look at Exhibit 79.

1 MR. BHANDARI: Can I approach the witness?

2 THE COURT: Yes.

3 Q. Looking at Exhibit 12, can you please turn to the page,  
4 that Bate stamped page 20.

5 A. 20.

6 Q. 20, yes. No, but it is there in Exhibit 12, right.

7 MR. BHANDARI: Do you mind if I approach to make sure  
8 we are on the same page?

9 THE COURT: Yes.

10 Q. Looking at page -- sorry. This is a different document.  
11 You can put that down.

12 What is the document you're looking at, what type of  
13 document is that?

14 A. It is a sign-in sheet.

15 Q. A sign-in sheet, correct?

16 A. Correct.

17 Q. It is not the certified payroll, correct?

18 A. No.

19 Q. What is the date of that sign-in sheet?

20 A. February 11, 2010.

21 Q. What does it say for your entry?

22 A. It says sick day.

23 Q. If you can go to page 22. What is the date of page 22 of  
24 Exhibit 12?

25 A. February 12, 2010.

1 Q. What does it say for your entry on February 12, 2010, in  
2 your signature block?

3 A. It says sick day.

4 Q. So how many sick days did you take that week?

5 A. Two.

6 Q. If you can go to page 18. What are the hours you signed  
7 in?

8 A. Eight to 12.

9 Q. And when you saw the certified payroll for that week, do  
10 you remember seeing the certified payroll?

11 A. Correct.

12 Q. How many hours were you paid for that day?

13 A. 36 I believe.

14 Q. For that week. How many were you paid for that day that  
15 you're looking at when you worked from eight to 12?

16 A. Oh, I don't remember.

17 Q. If we can go to the binder which is right next to it. I  
18 think you should be in Exhibit 79. Is that right? Or excuse  
19 me. Exhibit 12.

20 A. Correct.

21 Q. Do you see that week of February 13?

22 A. Yes.

23 Q. If you look to the day, what is the date on the time sheet  
24 that Mr. Wittels showed you before, what is the date on the  
25 time sheet where you worked from eight to 12?

1 A. 2/10.

2 Q. How many hours were you paid for that day?

3 A. Four hours.

4 Q. So were you paid the correct amount that you were supposed  
5 to be paid that week?

6 A. No.

7 Q. Taking into account sick days -- why not?

8 A. Because I should have got the extra in sick time.

9 Q. Well, did you take a sick day that day?

10 A. No.

11 Q. So do you remember exactly what happened on that day?

12 A. No.

13 Q. So based on your sign-in sheets, and the certified payroll,  
14 did you get paid the correct amount for that week?

15 A. Yes.

16 Q. So you didn't get paid extra that week, did you?

17 A. No.

18 Q. Okay. You testified before on cross-examination that you  
19 would get to Weirfield sometime between 6:45 and 7 a.m. on most  
20 days, correct?

21 A. Correct.

22 Q. You would sit in the car to listen to music, correct?

23 A. Correct.

24 Q. Are you seeking any compensation for the time you were just  
25 sitting in your car waiting for the gates to open?

1 A. No.

2 MR. BHANDARI: I have no further questions. Thank  
3 you.

4 THE COURT: All right. Anything else?

5 MR. WITTELS: Yes, Judge. Thank you.

6 RECROSS EXAMINATION

7 BY MR. WITTELS:

8 Q. Mr. McGlone, did you receive this letter, Exhibit 128?

9 A. Yes.

10 Q. Did you ever deal with Milton Simmons?

11 A. No, other people did.

12 Q. Other people dealt with -- other plumbers dealt with Milton  
13 Simmons?

14 A. Correct.

15 Q. You've been in the union a long time, right?

16 A. Yeah, a bit.

17 Q. There is always benefit supplements that you get as part of  
18 your pay, correct? As part of your union wage or prevailing  
19 wage?

20 A. Correct.

21 MR. BHANDARI: Objection as to form.

22 THE COURT: Overruled.

23 Q. You can either take the full benefit paid in cash, right?  
24 That's an option?

25 A. In the union?



1 Q. Let's talk about this job. You could take the full benefit  
2 package in cash if you elected to.

3 A. Yes.

4 Q. Or you could take the benefits or some of the benefits  
5 which were then deducted from the benefit package. Correct?

6 A. Correct.

7 Q. On those dates that Mr. Bhandari just went through with  
8 you, you got paid for those days. Your sick days, your  
9 vacation days. You got paid, correct?

10 A. I got paid for some, yes.

11 Q. But you did not work on those days. Correct?

12 A. Correct.

13 MR. WITTELS: Nothing further, Judge.

14 THE COURT: Okay. Anything else?

15 MR. BHANDARI: No, your Honor.

16 THE COURT: Thank you so much. You may step down.

17 (Witness excused)

18 THE COURT: Please call your next witness.

19 MR. GLUNT: In that case we would call Joe Frische to  
20 the stand.

21 (Continued on next page)

1 (At the sidebar)

2 THE COURT: I'm unclear, and so the jury may be  
3 unclear. Did Mr. McGlone choose to have the sick pay deduction  
4 from his paycheck, his regular paycheck, or not?

5 MR. BHANDARI: It was mandatory. Only the health care  
6 was optional.

7 THE COURT: Pardon?

8 MR. BHANDARI: It was mandatory. Only the health care  
9 was optional.

10 THE COURT: He did not choose it as his sick pay?

11 MR. BHANDARI: He did not, no. It was mandatory. It  
12 was deducted.

13 THE COURT: What was deducted?

14 MR. BHANDARI: The sick pay.

15 THE COURT: So at some point, I think you need to  
16 clarify for the jury one way or the other through a witness or  
17 somehow. Because I think if I'm confused, maybe they are.

18 MR. WITTELS: Judge, if I could. I think some of the  
19 confusion here is that the benefits package was not the only  
20 thing deducted in the benefits package was the health  
21 insurance. Part of the benefits package was the sick time,  
22 vacation time, etc. That's part of the pay. So it wasn't  
23 like, oh, we're deducting money from your pay so that you can  
24 have a sick day. And I don't even know if it is relevant. The  
25 only thing that's relevant here are the hours worked, not the

1 hours paid necessarily.

2 THE COURT: Whether it is relevant or not I don't  
3 know, because neither side raised a relevance objection.

4 MR. WITTELS: I think I might now.

5 THE COURT: To the extent you think it is relevant,  
6 someone ought to clarify it.

7 (Continued on next page)

(In open court)

(Witness sworn)

THE DEPUTY CLERK: Please be seated. State your name and spell it slowly for the record.

THE WITNESS: Joseph W. Frische. F-R-I-S-C-H-E.

JOSEPH FRISCHE,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLUNT:

Q. Good afternoon, Mr. Frische.

A. Good afternoon.

Q. Do you know the defendant in this case Contract Callers Inc.?

A. Yes, sir.

Q. How do you know them?

A. I worked for them.

Q. Are you a plaintiff in this case?

A. Yes, sir, I am.

Q. When you worked at Contract Callers, did they pay you for every hour that you worked?

A. No, sir.

Q. What did you do for a living before you came to work at CCI?

A. I owned a commercial construction company based in

1 Manhattan.

2 Q. What was the name of that commercial construction company?

3 A. Building Works Construction.

4 Q. For how many years did you operate Building Works  
5 Construction?

6 A. From 1994 of August until just before this -- I was hired  
7 on this project.

8 Q. When about was that?

9 A. I was hired around the middle of February, I interviewed.

10 Q. Of what year?

11 A. 2009.

12 Q. What kind of work did you do for Building Works  
13 Construction?

14 A. Commercial general contractor, everything from the windows  
15 in. Doors, drywall, electrical, plumbing, paint, everything  
16 but the carpet we did.

17 Q. I think you said commercial contractor?

18 A. All commercial, in Manhattan here.

19 Q. Was this for commercial buildings?

20 A. Yes, sir.

21 Q. Did you do any buildings around here?

22 A. 32 Broadway I did quite a bit of work for. I did work in 7  
23 Penn Plaza. 853 Broadway, 841 Broadway. 257 Park Avenue South.  
24 We worked for a larger organization.

25 Q. Did you do any plumbing work while you were operating

1 Building Works Construction?

2 A. Yes, sir.

3 Q. What kind of plumbing work did you do?

4 A. We would redo common bathrooms, make them ADA accessible.  
5 Which is American Disabilities Act.

6 Q. While you were operating Building Works Construction, did  
7 you have any employees?

8 A. Yes, sir.

9 Q. How many employees did you have?

10 A. Usually I worked with another mechanic and there was two  
11 helpers.

12 Q. Why did you stop working for Building Works Construction,  
13 your company, to work for CCI?

14 A. After 2001, 9/11, it got really bad. And it was sort of  
15 struggling. The big money was gone. In 2008 with the  
16 economic, you know, downturn, with banks failing, nobody had  
17 any money. So my wife was adamant, get a good job and just  
18 take a paycheck.

19 Q. How did you find out about the CCI job?

20 A. Rocco Ceparano.

21 Q. What did you understand the job to be?

22 A. Originally he told me that we were going to be installing  
23 water meters.

24 Q. Did you interview before you received this job?

25 A. Yes, sir.

1 Q. Who interviewed you?

2 A. Angelo Solimine, Charles Loguidici.

3 Q. When did you start work on the project?

4 A. I interviewed around the middle of February. They called  
5 me a day later, told me I was going on their A team sent to  
6 D.E.P. training, and about a week later I was working.

7 Q. Did you receive any training before you started work?

8 A. Yes, sir.

9 Q. Who conducted that training?

10 A. We went over to Brooklyn and Mike Roche, the head of the  
11 project was training us, David Costa, an inspector. Gentleman  
12 named Willy, and Ken, they were also inspectors.

13 Q. You've given us some names of some individuals. What  
14 organization did those people work for?

15 A. Mr. Roche is the project manager who ran the MTU project.  
16 David Costa, Willy and Kenny, they were D.E.P. inspectors.

17 Q. Mr. Roche, what company did he work for?

18 A. He's a big shot at D.E.P.

19 Q. Let's talk about your typical day of work at CCI. Where  
20 was CCI's office located?

21 A. It was on Weirfield Street between Cypress and Wyckoff.

22 Q. What borough was that?

23 A. It's in -- well, the end of the street on Wyckoff is  
24 Brooklyn. And the Cypress is Queens.

25 Q. Where were you living at the time?

1 A. Syosset, New York.

2 Q. That's on Long Island?

3 A. Yes, sir.

4 Q. When you worked on the CCI project, when would you leave  
5 your house to go to work in the morning?

6 A. Depends. I carpooled with some of the men. I was issued a  
7 company vehicle.

8 Q. If you were going by yourself, when would you leave your  
9 house?

10 A. Ten after six the latest.

11 Q. If you were carpooling with someone else, when would you  
12 leave then?

13 A. Depends. With Mike McGlone, Mike was at my house at 10 to  
14 six. When I was with Mr. Murphy, he was at my house at six.

15 Q. You mentioned a couple of people that you carpooled with.  
16 Did you carpool with anyone else?

17 A. Rocco Ceparano originally.

18 Q. When you carpooled with any of those people, when would you  
19 pick them up for work?

20 A. Mr. Murphy and Mr. McGlone came directly to my house.

21 Mr. Ceparano lives about two and a half miles east of me, so I  
22 would just go and grab him.

23 Q. About what time in the morning would you go grab him?

24 A. I would alert him at 5:45. That meant I was on my way to  
25 come and get you and be ready.



1 Q. Were you trying to make sure he was awake?

2 A. Yes.

3 Q. When would you arrive at the Ridgewood office?

4 A. My goal was 7:15. Sometimes it was a little early,  
5 sometimes it was a little late. But never later than 7:30.

6 Q. When you arrived at the Ridgewood office, where would you  
7 park this company truck?

8 A. On the street.

9 Q. Would it always be right in front of the office?

10 A. No.

11 Q. When did the doors actually open on the Ridgewood office?

12 A. They were open by seven.

13 Q. What time is the shift supposed to begin?

14 A. 8 o'clock we signed in.

15 Q. Once the doors opened, what was the first thing you would  
16 do when you got into the CCI offices?

17 A. I would go to the back conference room, I would grab my CN3  
18 and my paperwork, see if they had scheduled appointments for  
19 me, look over the route, and make sure I had every scrap of  
20 material I needed to do my job.

21 Q. You mentioned that you would get every scrap of material  
22 that you would need to do your job. What kind of material  
23 would you need to ensure that you had?

24 A. In the beginning of the project, we were a little short on  
25 certain types of register heads, so if I knew there was a

1 project or an appointment, I would make sure I had just what --  
2 what I needed for that appointment. So sometimes you would ask  
3 other guys, hey, look, there is none in the back. Do you have  
4 one on your truck? Could I borrow it? I need it for this job.

5 Q. What is a register head?

6 A. The top of the meter that actually registers the usage.  
7 There is a magnet inside with an impeller that spins and that's  
8 what makes the dial click.

9 Q. Other than register heads, what other kinds of material  
10 would you get for your job?

11 A. Extra lengths of wire, we always tried to keep 100-foot run  
12 on the truck. Made sure I had register head pins, because when  
13 you change the register head, you knock the pin out. Quarter  
14 turn, take the head off, put a new head on, spin it, push a new  
15 pin in.

16 Q. What were you installing for CCI?

17 A. Water meters and MTU boxes.

18 Q. Would CCI provide the water meters and the MTU boxes?

19 A. Yes.

20 Q. Would you ensure you had those in your truck as well?

21 A. Yes, my truck was heavily stocked.

22 Q. To be clear, how many different types of meters would you  
23 need to keep on your truck?

24 A. 10.

25 Q. 10 different types of meters?

1 A. Yes.

2 Q. What kind of sizes?

3 A. Well, we had AMCO Elster was replacement meters, they were  
4 the manufacturer. There was five-eighths, three-quarters, one  
5 inch, inch and a half, two inch.

6 Then there was high demand meters called single jets.  
7 Two inch, inch and a half, one inch, three-quarter short  
8 spread, only this far apart, three-quarter long spread, this  
9 far apart, and that was it.

10 So there was 10 different types of meters.

11 Q. Did each of the meters require its own set of other  
12 materials to install properly?

13 A. Yes, there was. With the larger meters, I saw that you  
14 showed the other day, you needed gaskets, you needed bolt kits,  
15 some of the single jet meters required, they called spacers.  
16 It actually looked like a dumbbell, piece of brass with flanges  
17 to make up the space. If we took out, say, like, the meter you  
18 showed the other day, and we replaced with a single jet. So  
19 you'd to make up the size because the single jet was a shorter  
20 meter.

21 Q. How long would it take you to load up your truck with all  
22 this different equipment on an average day?

23 A. It all depends on how much you went through, if you were  
24 working with a partner or you working alone.

25 Q. Did you work exclusively with a partner, exclusively alone,

1 or a mix of the two?

2 A. A mix of the two. Primarily alone though.

3 Q. If you were by yourself, how long would it take you to load  
4 up the truck?

5 A. About 15 minutes. 20 minutes.

6 Q. Before you left the Ridgewood office, did you need to punch  
7 a clock or sign in in any way?

8 A. I would sign in.

9 Q. What time would you sign in each morning?

10 A. 8 o'clock.

11 Q. Mr. Frische, was that accurate?

12 A. That's when I was told to sign in.

13 Q. Was that the time you had started working?

14 A. No.

15 Q. Why did you sign in at 8 o'clock if you had started working  
16 earlier?

17 A. That was the rule. Sign in 8 o'clock.

18 Q. Did someone tell you that rule?

19 A. Yes.

20 Q. Who told you that rule?

21 A. Angelo Solimine.

22 Q. Were you told that on your first day of work or some time  
23 after that?

24 A. We were told that in the beginning.

25 (Continued on next page)

1 BY MR. GLUNT:

2 Q. Now, did you think it was right for you to sign in 45  
3 minutes before you actually started, 45 minutes after you  
4 actually started work?

5 A. No, I didn't think it was right.

6 Q. Why did you do it?

7 A. I needed that job.

8 Q. Mr. Frische, would you have signed in 45 minutes after you  
9 started work if you had not been told to?

10 MR. WITTELS: Objection, Judge.

11 THE COURT: Let me have the last question read.

12 (Record read)

13 THE COURT: Overruled.

14 BY MR. GLUNT:

15 Q. You can answer.

16 A. Would I have signed in? Normally I would not have.

17 Q. Did you benefit in any way from signing in 45 minutes after  
18 you actually started work?

19 A. Yeah, I kept my job.

20 Q. Other than keeping your job, did you get paid any more  
21 money for doing that?

22 A. No.

23 Q. Did you get paid less money for doing that?

24 A. In the long run, yes.

25 Q. Now, did you attend meetings while working at CCI?

1 A. Yes, sir.

2 Q. And when did those meetings take place?

3 A. Usually when all the men were there, they would put us in  
4 the back room, Mr. Loguidici would say, We're having a meeting,  
5 get in the back room, we're waiting for whoever, and we're  
6 going to have a meeting.

7 Q. And how did you find out about the meetings?

8 A. Mr. Loguidici or Mr. Solimine.

9 Q. Was attendance mandatory at these meetings?

10 A. Absolutely.

11 Q. Now, would these meetings take place before 8:00 or after  
12 8:00?

13 A. Before 8:00.

14 Q. And what time would you sign in if you attended one of  
15 these meetings?

16 A. 8:00.

17 Q. Even if the meeting had started before 8:00?

18 A. That was the routine, 8:00 sign in.

19 Q. How frequently did these meetings take place?

20 A. In the beginning, there was quite a few.

21 Q. Over time, were there fewer?

22 A. Yes.

23 Q. Who ran these meetings?

24 A. Charlie Loguidici would run some, Angelo would run some, a  
25 combination of both.

1 Q. Did you ever see Mr. Solimine or Mr. Loguidici in the  
2 office before 8:00?

3 A. Yes.

4 Q. And did you ever speak to Mr. Solimine in the office before  
5 8:00?

6 A. Sure.

7 Q. Now, let's look at a document that's already in evidence,  
8 Exhibit 76. Mr. Frische, do you recognize this?

9 A. Sure. It's a daily sign-in sheet.

10 Q. And whose signature is at the very bottom of this time  
11 sheet under contractor representative?

12 A. I couldn't tell you who signed that. That's just an  
13 initial scribble.

14 Q. Well, whose name is listed as the general manager?

15 A. Angelo Solimine.

16 Q. Did Mr. Solimine ever tell you he couldn't sign one of  
17 these sheets because he knew you were in there before 8:00?

18 A. No, sir.

19 Q. Now, assuming there was no meeting, what time would you  
20 leave the Ridgewood office to go out into the field?

21 A. My routine was to come in, get ready, and I would say, Is  
22 there a meeting, and if they say no meeting, I'd get out of  
23 there.

24 Q. And would you get out of the office before 8:00 some days?

25 A. Oh, as much as I could.

1 Q. You mentioned in your testimony a moment ago that sometimes  
2 it would take you more time to load up your truck and sometimes  
3 it would take you less time to load up your truck. Is that  
4 correct?

5 A. Yes.

6 Q. If you got there on a given day and it wouldn't take you as  
7 long to load up your truck, would you hang around the office,  
8 or would you leave the office and get to work?

9 A. I always asked if there was a meeting or something going  
10 on. Sometimes I would wait to speak to Mr. Solimine about an  
11 issue in the field, and if not, I was out the door.

12 Q. Even though you'd already signed in at 8 a.m.?

13 A. Yup.

14 Q. Now, what were your responsibilities once you left the  
15 Ridgewood facility?

16 A. If I had appointment, make sure I did all my appointments.  
17 Once they were done, start canvassing. The goal was to get as  
18 much work as I could get done in a day.

19 Q. What was the earliest that your appointments could be  
20 scheduled?

21 A. We had 8:00 appointments. There were some time-specific,  
22 eight to 8:15, 8:15 to 8:30, be there at ten.

23 Q. So if you had an eight to 8:15 appointment, what time did  
24 you need to get to that appointment to be on time for it?

25 A. That's why I would come in early, to check my appointment



1 sheet, and if I had to go, I had to go. We worked anywhere  
2 from Shea Stadium to the East River, so you never knew where  
3 you were going. It could take you a half hour, 40 minutes to  
4 get there.

5 Q. So you had an eight to 8:15 appointment, could you make  
6 that appointment if you didn't get to the Ridgewood facility  
7 until 8:00 in the morning?

8 A. Not without a helicopter.

9 Q. Mr. Frische, if you were working by yourself, how many  
10 water meters would you replace in a day?

11 A. On a good day, I could turn ten.

12 Q. And when you replaced a water meter, would you also always  
13 install an MTU?

14 A. Yes, sir.

15 Q. Did you ever install an MTU without replacing a water  
16 meter?

17 A. Yes, sir.

18 Q. And how many MTU-only jobs would you do on the average day  
19 by yourself?

20 A. They weren't very profitable, so they would discourage to  
21 go after those.

22 Q. Well, how many on average would you do on a given day?

23 A. Just MTUs alone?

24 Q. Yes.

25 A. Five, six, maybe.

1 Q. You say that they weren't very profitable. How did you  
2 know they weren't very profitable?

3 A. Mr. Solimine told us.

4 Q. Did Mr. Solimine tell you what jobs you needed to do to  
5 ensure that you were profitable?

6 A. Working alone six and two was good, except on a Monday or a  
7 Saturday.

8 Q. Let's break that down a little. When you say six and two,  
9 what do you mean? Six of two and two of what?

10 A. Six meters with MTUs and just two MTU boxes alone. That  
11 was profitable for them.

12 Q. Is that the quota that you were given?

13 A. Yeah. That was, that was the comfortable number that they  
14 liked. Five and three was O.K. But six and two was better.  
15 Seven and one was even better.

16 Q. And I think you said except on a Saturday or except on a  
17 Friday. What do you mean by that?

18 A. On a Monday.

19 Q. I'm sorry. Except on a Monday. What do you mean by that?

20 A. Charlie Loguidici usually worked from Tuesday to Saturday,  
21 so he was off on Monday. Mr. Solimine was there, so by the  
22 grace of whatever, if you were able to get to incentive, you  
23 would call in, it was always, Give me one more, give me two  
24 more. And Saturday, Mr. Solimine said, You're getting paid  
25 more money, you have to do more work.

1 Q. Did you ever have difficulty meeting the quota that  
2 Mr. Solimine had given you?

3 A. Yeah, there were days.

4 Q. And what happened to you if you didn't meet your quota?

5 A. It was really based on the week. So if you had a bad day,  
6 you would make it up.

7 Q. How would you make it up?

8 A. Just, you just run. You just run all day long.

9 Q. And what would happen if on a given week you didn't meet  
10 your quota?

11 A. If you were close, it wasn't a big deal. If it was a  
12 repetitive problem, there were consequences.

13 Q. What kind of consequences would there be?

14 A. The threats were they would take your company vehicle.  
15 Then you would, when you weren't in charge of a vehicle, it was  
16 sort of a demotion, and then after that, your fate was whatever  
17 it was.

18 Q. And what do you mean your fate was whatever it was?

19 A. The handwriting was on the wall, they were going to fire  
20 you.

21 Q. And did you feel that if you didn't meet your quota on a  
22 regular basis, you would be fired?

23 A. Oh, absolutely.

24 Q. Now, Mr. Frische, did you take lunch breaks while you were  
25 working at CCI?

1 A. Yes, sir.

2 Q. Now, did you know what your lunch break was supposed to be  
3 when you were working at CCI?

4 A. Originally in training, they told us we could get a half  
5 hour.

6 Q. And how many days on an average week would you take a full  
7 half-hour lunch break.

8 A. Probably twice a week.

9 Q. Now, why wouldn't you take your full 30-minute lunch break  
10 every day?

11 A. Usually there was no time, and what I would do is I would  
12 work very hard Monday through Wednesday so I knew my numbers  
13 were close for the week, and then I was able to sort of say,  
14 O.K., I could take a lunch today, and I always took it on  
15 Friday.

16 Q. Now, did you eat anything on days that you didn't take a  
17 full lunch break?

18 A. I ate every day.

19 Q. And on the days that you didn't take a full lunch break,  
20 how long on average would you spend eating?

21 A. Maybe 15 minutes. I would eat a sandwich and I'd call a  
22 customer and try and move an appointment up further so I could  
23 clear that off my schedule.

24 Q. So if you were taking a full 30-minute lunch break on  
25 average two days a week, how many days a week were you not

1 taking that full 30-minute lunch break?

2 A. Probably three.

3 Q. Now, were you required to document your lunch breaks in any  
4 way?

5 A. That documentation didn't come in until very late into the  
6 project.

7 Q. So originally, you weren't required to do any  
8 documentation?

9 A. No, sir.

10 Q. I think you said a second ago that sometime later in the  
11 project that changed. Is that right?

12 A. Yes, sir.

13 Q. And what documentation arose later in the project?

14 A. They introduced a break sheet into the project.

15 Q. What was a break sheet?

16 A. Well, they informed us that we were entitled to a 15-minute  
17 break, which we never knew about before, and that they wanted  
18 us to document the time when we took our lunch.

19 Q. So I understand you, Mr. Frische, prior to you seeing your  
20 first break sheet, did you know that there was a 15-minute  
21 morning break?

22 A. No.

23 Q. Did anyone ever tell you there was a 15-minute morning  
24 break?

25 A. No, sir.

1 Q. Were you taking a 15-minute morning break?

2 A. No, sir.

3 Q. Can you just speak into the mike?

4 A. No, sir.

5 Q. Now, the break sheets that you submitted for CCI, were  
6 those accurate?

7 A. No, sir.

8 Q. Why did you fill out the break sheets if they weren't  
9 accurate?

10 A. Mr. Loguidici would come in on Tuesday, and the rule was  
11 you had to hand your break sheets to him. If you didn't, you  
12 weren't allowed to go out into the field. So I would just  
13 write up a break sheet and make it look good and hand it in.

14 Q. Were you permitted to turn in a break sheet that did not  
15 state that you had taken a 30-minute lunch every single day?

16 A. I don't know what everybody else turned in.

17 Q. Did you ever do that?

18 A. Less than a 30-minute lunch break?

19 Q. Yes.

20 A. No. I'm smart enough to know what, how long I get for  
21 lunch.

22 Q. Now let's talk about the evenings. On average, when would  
23 you return to the Ridgewood office at the end of the day?

24 A. Twenty to five, quarter to five.

25 Q. And when you returned, where would you park your truck?

1 A. Double park in front, double park four or five cars back.  
2 Maybe get a spot, but that was very rare.

3 Q. You say double park. Obviously, if there was parking, you  
4 would take an available space?

5 A. Yeah, if there was, but it usually never was there.

6 Q. To be clear, did CCI have a parking lot or any reserve  
7 parking for the cars?

8 A. They had a warehouse with a huge overhead door, 14-foot  
9 high, 10-foot wide, with one spot, for Mr. Solimine.

10 Q. How many company cars did CCI have for this project?

11 A. I would think there was probably ten.

12 Q. So they had ten company cars but no parking spots for them?

13 A. No, sir.

14 Q. And did you ever get a ticket, Mr. Frische?

15 A. In front of the shop, yes, I got two or three.

16 Q. And who paid those tickets, Mr. Frische?

17 A. I paid two of them. Later on, gentlemen would complain  
18 and -- other installers, and Mr. Solimine, he paid one of them  
19 for me.

20 Q. What's the first thing you did when you got back to the  
21 office at night?

22 A. If I worked alone, I would unload all my meters, fill out  
23 my meter sheet, lock up my truck, and bring all my meters in  
24 and put them on the ground with my meter sheet.

25 Q. Now, how many meters would you unload on average per day?

1 A. Myself, maybe six. Alone. If I was alone.

2 Q. If you were alone. If you were working with someone else,  
3 how many meters on average would you unload on a given day?

4 A. Myself and Robert Gandolfo would turn 12, 15, without  
5 thinking twice.

6 Q. How many day trips back and forth to your car would it take  
7 you to unload all the meters?

8 A. It all depends on the size.

9 Q. Let's assume for the second you were unloading two-inch  
10 meters like that big one we saw the other day. How many trips  
11 would it take you to unload six two-inch meters?

12 A. Six two-inch meters, well, probably three trips and my  
13 hands would be killing me and my back would be screaming.

14 Q. Would you frequently be unloading six two-inch meters  
15 though?

16 A. No, I'd usually do one at a time, I would bring them in.

17 Q. And you mentioned a moment ago a meter sheet. What is a  
18 meter sheet?

19 A. It was an inventory sheet that documented the serial number  
20 on the meter that we took out, the size, the manufacturer.  
21 Someone in the shop, the night guy, he would verify that all  
22 the meters were collected and save those sheets and then put  
23 them in a scrap bin.

24 Q. And would you have to fill out a meter sheet for every  
25 meter that you took out?



1 A. It was just one long sheet with all the meter numbers,  
2 manufacturers and sizes.

3 Q. Other than meter sheets, what other paperwork did you need  
4 to fill out for your job at CCI?

5 A. You had your daily worksheet. You had to save a meter  
6 ticket with the serial number on it. We would tear them off  
7 after the install and initial them. If you had any defective  
8 register heads, you'd fill out the AMR report. If you had any  
9 MTUs that wouldn't program, you had to fill out a card so they  
10 would go back to Aclara to be, you know, checked out, what was  
11 wrong with them.

12 Q. You said Aclara a second ago. Who is Aclara?

13 A. Aclara is the manufacturer of the MTUs.

14 Q. You mentioned daily worksheets a moment ago. What were  
15 daily worksheets?

16 A. When you went to a job, you would write down the address,  
17 and then you would take the old serial number off the meter,  
18 the new number and everything that you programmed into the  
19 handheld CN3 computers.

20 Q. And you mentioned a second ago an MTU card. What is an MTU  
21 card?

22 A. Well, the MTU card was only used if you had a defective  
23 meter, a defective MTU. Excuse me. So sometimes you would put  
24 it on, you would wire it and it would not program. And you  
25 would troubleshoot the whole new thing, you'd change all the

1 wiring, you'd do everything conceivable and it wouldn't work,  
2 so we would take it, then mark it and then we would have to  
3 surrender it back to the manufacturer.

4 Q. Did you hear any of the other witnesses describe something  
5 called a seal card?

6 A. Yes. A seal card was done, seals were given out in boxes  
7 of ten, and there may have been maybe 20 slots on a seal card,  
8 so what you would do is you would write all your seals, lock  
9 block and everything down, and when the sheet, when the card  
10 was finished, you would turn it in.

11 Q. Now, Mr. Frische, did CCI keep track of the mileage that  
12 you were putting on the company car every day?

13 A. Yes, sir, every day. In and out we'd sign the mileage.

14 Q. You would sign the mileage. What would you sign that on?

15 A. There was a sheet right next to the sign-in sheet where  
16 we'd log our miles when we came in in the morning, and we'd log  
17 our miles when we came after that day of work, and every day we  
18 did that.

19 Q. Did CCI keep track of the register heads you replaced?

20 A. Yes, sir.

21 Q. How did they keep track of that?

22 A. We would have to fill out paperwork on there and then we  
23 would actually write the address on it, tag it with a piece of  
24 wire and we'd leave it in the back room in a box with the  
25 report, the form, wrapped around with a rubber band.

1 Q. And did CCI keep track of any problems that occurred with  
2 installations?

3 A. Well, aside from defective equipment or other things like  
4 that, not really.

5 Q. What about defective equipment; did CCI keep track of  
6 defective equipment that you identified in the field?

7 A. That was their, all we did was we turned it in and we left  
8 it there for management to deal with.

9 Q. Did you ever fill out something called an incident report?

10 A. Yeah. There were incident reports.

11 Q. What were incident reports?

12 A. It could vary. You could go to a house and go to do,  
13 change a water meter and the people were smart enough and took  
14 the register head off so there was never a reading. Could be  
15 the meter wasn't there anymore. It could be that you faced a  
16 very hostile person and you ran into trouble, which I did.

17 Q. Now, how long would it take you on an average day to fill  
18 out all these forms?

19 A. It really all depended on what came your way, but it was --  
20 you know, you could sit there for 40 minutes doing paperwork at  
21 the end of the night.

22 Q. Mr. Frische, could you have stopped work in the middle of  
23 the day and taken 40 minutes to fill out all this paperwork?

24 A. No, no.

25 Q. Why not?

1 A. You were too busy. You were, you know, there was, there  
2 was constant pressure, the radio was going off. This guy needs  
3 something over here; Charlie's calling, how's your numbers,  
4 O.K., Charlie, I have this; Do me a favor, give me one more  
5 job, I want to put it on so-and-so's paperwork, he's got a  
6 really bad route. You would go and do a job and give it to  
7 another gentleman. Charlie wanted balance throughout the crew.

8 Q. After you filled out your paperwork and unloaded your  
9 truck, on average, what time would you finally leave work at  
10 the end of the day?

11 A. I don't believe I really ever left before 5:30.

12 Q. And on average, if you take all the times you left before  
13 5:30, all the times you left well after 5:30, on average, what  
14 time do you think you left?

15 A. Pretty close to 5:30, because I wouldn't leave the field  
16 until 20 after.

17 Q. Now, did you sign out before you left?

18 A. Yes, sir.

19 Q. What time would you sign out?

20 A. 4:30.

21 Q. Why would you sign out at 4:30 if you weren't leaving  
22 before 5:30?

23 A. Because I needed my job.

24 Q. And did you feel that your job would be in jeopardy if you  
25 didn't sign out at 4:30?

1 A. Oh, yes.

2 Q. Did anyone ever tell you to sign out at 4:30 even if you  
3 stayed later?

4 A. If I signed out after 4:30, there had to have been  
5 management approval.

6 Q. Now, you mentioned management approval. Were there  
7 circumstances in which you signed out after 4:30?

8 A. Yes, sir.

9 Q. Under what circumstances would you sign out after 4:30?

10 A. I was stuck on a job, I called Charlie, Charlie would come  
11 by and say, Yeah, it's O.K., call Angelo, he would approve it.

12 Q. Under those circumstances, would you sign out after 4:30?

13 A. Yes, sir, whenever they told me.

14 Q. And would you be paid overtime on those occasions?

15 A. Yes, sir.

16 Q. Now, are you familiar, Mr. Frische, with an incentive plan  
17 that CCI offered?

18 A. Yes, sir.

19 Q. What was the incentive plan?

20 A. They said the company really didn't offer any kind of bonus  
21 for the men, so Angelo and Charlie devised the incentive  
22 program to give us a reason to try and work a little harder and  
23 go home earlier.

24 Q. And did you ever go home early on the incentive plan?

25 A. Less than five times.

1 Q. Mr. Frische, I want you to give me a sense of scale. How  
2 many days were you working for CCI every week?

3 A. Five to six.

4 Q. And how many days per month were you working for CCI on  
5 average?

6 A. Well, 30 days in a month, minus eight, you know, 22, 23  
7 days a month.

8 Q. And how many months out of the year?

9 A. 12.

10 Q. So in a given year, is it fair to say that you were working  
11 more than 250 days for CCI?

12 A. That's the math.

13 Q. And how long did you work on the CCI project?

14 A. From the end of February to the middle of September.

15 Q. Middle of September of?

16 A. '11.

17 Q. So February of what year?

18 A. '09.

19 Q. To September of what year?

20 A. '11.

21 Q. So that's over two and a half years?

22 A. 32, 33 months, around there.

23 Q. So for over two and a half years, hundreds of days, how  
24 many times did you go home early?

25 A. On incentive plan, five or six.

1 Q. Now, Mr. Frische, were you ever asked to redo a time sheet  
2 after you filled it out?

3 A. Yes, sir.

4 Q. And how many times were you asked to redo a time sheet?

5 A. Once or twice.

6 Q. And who asked you to redo the time sheets?

7 A. Angelo.

8 Q. And did Mr. Solimine tell you why you were redoing the time  
9 sheets?

10 A. Yes, sir.

11 Q. And what did he say?

12 A. First time was, I believe, the Buffalinos made a mistake,  
13 so we had to clean it up.

14 Q. O.K. And what about the second time?

15 A. The second time, Robert Gandolfo came into work, he was  
16 suspended, but he had signed in because he got there early, and  
17 Angelo said, I want everybody to come back and redo the time  
18 sheets.

19 Q. Now, Mr. Frische, we were just talking about time sheets.  
20 Were there any days you worked for CCI when you didn't sign in  
21 at all?

22 A. Yes, sir.

23 Q. How many days was that?

24 A. Two.

25 Q. And why didn't you sign in on those two days?

1 A. Angelo had a group meeting in the back, said the company  
2 was losing money and he wanted all of us to pitch in and take  
3 one for the team.

4 Q. What did you understand that to mean?

5 A. He wanted us to go out and work in the field to correct  
6 problems for free.

7 Q. And what kind of problems were occurring in the field at  
8 that time?

9 A. The jobs were not going through to DEP, so they could be  
10 processed for payment. He wanted guys to go out and correct  
11 the issues.

12 Q. So what do you mean when you say that the jobs were not  
13 going through to DEP; can you describe that a little bit?

14 A. Yes, there was a certain amount of times after you  
15 installed an MTU on a meter under an inch and a half it would  
16 send six signals out a day with the reading. They had to  
17 receive X amount of signals over X amount of days and then they  
18 would deem the job was done. On a two-inch meter, it was a  
19 high, it would put out a reading every hour and they had the  
20 same process. Certain amount of readings over a certain amount  
21 of days, the job was completed, processed for payment.

22 Q. I think you said a second ago the DEP wasn't getting the  
23 right signals, is that right?

24 A. Yeah, the towers were not working correctly in the  
25 beginning. There were glitches, little gremlins in the project



1 to start with.

2 Q. And what did you understand Mr. Solimine to be asking you  
3 to do to fix those problems?

4 A. Go out and correct them.

5 Q. And did you understand him to want you to go out and  
6 correct them during your normal shift?

7 A. No. When he said take it for the team, that means you go  
8 out and you work for nothing to help the company out.

9 Q. Now, did you end up doing that?

10 A. Yeah, he sort of put a little pressure on me.

11 Q. When you say sort of put a little pressure on you, what  
12 pressure, what did he say?

13 A. He pulled me aside, he goes, Some of these rejections are  
14 probably yours, you know, Frische. So I spoke with Michael  
15 Ceraldi who was working with me at the time and I said, Come  
16 on, let's give him a day, let's fix the problems.

17 Q. What was the first time that you worked without signing in?

18 THE COURT: Counsel, I think maybe we better break at  
19 this point for lunch and we'll pick up here after lunch.

20 Ladies and gentlemen, we'll take our lunch break now  
21 and we'll resume at 2:00.

22 JUROR: Your Honor, you said 2:00?

23 THE COURT: 2:00.

24 (Jury excused)

25 THE COURT: Mr. Frische, you can step down. We'll see

1 you at 2:00.

2 THE WITNESS: Yes, sir.

3 (Witness excused)

4 THE COURT: Anything counsel need to address with the  
5 Court?

6 MR. BHANDARI: Yes, your Honor. There was one issue.  
7 We received a copy of the contracts between CCI and the DEP  
8 yesterday. When we reviewed the contract, the contract states  
9 that overtime must be paid for everybody working on this  
10 project. If they ever worked more than eight hours a day. It  
11 doesn't matter if they worked 40 hours a week or not, so the  
12 earlier instruction I was given that said that if people got  
13 unpaid hours would be paid minimum wage, that's not correct  
14 under New York Labor Law. If there's a contract that states  
15 people are supposed to be paid a particular wage for overtime,  
16 more than eight hours a day, they're actually supposed to be  
17 paid that wage for the unpaid time, not just the minimum wage.  
18 I don't know if the Court wants briefing on that particular  
19 issue or if it's something more suitable to bring up during the  
20 jury instruction stage.

21 THE COURT: Since you didn't object to that at the  
22 time, I don't think we need to bother the jury about it now,  
23 but we want to get it right, of course, so we'll discuss it  
24 during the charging conference and resolve it then.

25 (Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

(In open court; jury present)

THE COURT: Counsel.

BY MR. GLUNT:

Q. Good afternoon, Mr. Frische.

A. Hello.

Q. Are you aware that you are still under oath to tell the truth?

A. Yes, sir.

Q. Before we left, you were just telling me about the two days that you worked completely off the clock. Is that right?

A. Yes, sir.

Q. Now, remind me. Why did you work two days without signing in?

A. A lot of the jobs we had done were not going through to DEP to be processed. Mr. Solimine had asked the entire group of men, they should take one for the team, go out in the field and correct all these projects.

Q. And what did you understand "take one for the team" to mean?

A. To work for free.

Q. What is the first time that you worked for free?

A. Right after that meeting, Mr. Solimine came to me and said, You know, Frische, most of these rejections are yours, and I

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Frische - direct

1 went to my partner at the time, which is Michael Ceraldi, and I  
2 said, Mike, we can give them a day, so Mike agreed and we went  
3 out to work shortly after that.

4 Q. Was this a day that other workers were also working in the  
5 field?

6 A. Yes. We were on a four-ten schedule, so it was, I guess  
7 you'd consider our fifth day.

8 Q. And when you came in on that day, did you see  
9 Mr. Loguidici?

10 A. Sure.

11 Q. And did he know that you were scheduled, whether you were  
12 scheduled to come in that day?

13 A. I don't know.

14 Q. And how many hours did you work on that day?

15 A. Mike Ceraldi and myself put an eight-hour day in.

16 Q. Were you paid for that eight-hour day?

17 A. No, we didn't sign in.

18 Q. What's the second time that you came in, that you worked  
19 without signing in?

20 A. I was still on the four-ten schedule, and it was the Friday  
21 before Memorial Day, 2009, and would have worked out a four-day  
22 weekend for me, and Mr. Solimine said there were a lot of  
23 rejections and he wanted them fixed.

24 Q. And did you have any plans for that four-day weekend?

25 A. Yeah, I planned to go to see my dad in Florida.

F5kWmcg4

Frische - direct

1 Q. Did you end up going to see your dad in Florida?

2 A. No.

3 Q. What did you end up doing instead?

4 A. Mr. Solimine said he wanted them fixed before Monday.

5 Q. Did you come in over the weekend and fix them before  
6 Monday?

7 A. He told me to come in and work on Friday.

8 Q. This was the Friday before Memorial Day?

9 A. Yes, sir.

10 Q. Did you sign in that day?

11 A. No, sir.

12 Q. Is it fair to say that you remember that pretty clearly?

13 A. Yes, sir.

14 Q. How many hours did you work on that Friday before Memorial  
15 Day?

16 A. Full eight-hour shift.

17 Q. Were you paid anything for that eight-hour shift?

18 A. No, sir.

19 Q. Mr. Frische, what kind of vehicle did you use when you were  
20 working for CCI?

21 A. Company issued us Suzuki XL7s. They were small SUVs.

22 Q. Did you drive to and from work each day?

23 A. Yes, sir.

24 Q. Did you do any maintenance on that company car?

25 A. Yes, sir.

F5kWmcg4

Frische - direct

1 Q. What maintenance did you do?

2 A. Oil changes and I washed the car every Sunday.

3 Q. And why did you wash it every Sunday?

4 A. Monday morning was inspection.

5 Q. Who would do the inspection?

6 A. Angelo or Charlie.

7 Q. And were you ever told you had to wash that car?

8 A. Yes. They were white vehicles. They, it's hard to keep a  
9 white car clean.

10 Q. And who told you that you had to wash the car?

11 A. Angelo.

12 Q. Now, when would you wash the car during the week?

13 A. Sunday, 4:00.

14 Q. Were you paid for that time?

15 A. No, sir.

16 Q. How often would you change the oil in the car?

17 A. I read the owner's manual and it said I had to put 530  
18 synthetic in. I took it to Jiffy Lube the first time. They  
19 charged me \$84. Angelo screamed, Don't ever do that again, oil  
20 changes are \$20. So from then on, I would go to Wal-Mart, buy  
21 the oil, the filter, and do it in my driveway.

22 Q. How long would it take you to change the oil in your  
23 driveway?

24 A. Half hour.

25 Q. And were you paid for that time?

1 A. No, sir.

2 Q. Did you ever fill out any time sheets for the time you  
3 spent maintaining that car?

4 A. No, sir.

5 Q. Did you maintain personal records of the hours you were  
6 actually working?

7 A. No, sir.

8 Q. Did anyone ever tell you that you had to maintain personal  
9 records of the times you were actually working?

10 A. No, sir.

11 Q. Did it ever occur to you to maintain personal records of  
12 the times that you were working?

13 A. No, sir.

14 Q. Had you ever met Tim Wertz, the president of CCI?

15 A. He came up one time and introduced himself to the men in a  
16 group meeting in the back of the room, but I never met him. I  
17 saw him.

18 Q. Have you ever spoken to him personally?

19 A. No, sir.

20 Q. Have you ever met Mike Maguire, vice president of CCI?

21 A. Yes, sir.

22 Q. When did you meet him?

23 A. A few times when I came back from the field, he was there  
24 with a gentleman named Dennis McCabe; they were up to oversee  
25 what was going on.

F5kWmcg4

Frische - direct

1 Q. Who was Dennis McCabe?

2 A. I really don't know what his position was.

3 Q. Did you understand him to be a person affiliated with CCI?

4 A. Yes.

5 Q. Did Mr. Solimine or Mr. Loguidici ever tell you who their  
6 bosses were?

7 A. Yes. Mr. Maguire was their boss and Mr. Wertz.

8 Q. Did you ever complain to Mr. Solimine or Mr. Loguidici that  
9 you weren't being paid for all the hours that you worked?

10 A. I mentioned it to Charlie Loguidici. He realized what was  
11 going on with me, and --

12 MR. WITTELS: I object to his speculation.

13 THE COURT: Sustained.

14 Q. Mr. Frische, if you could, just tell us what he said to you  
15 after you made a complaint.

16 A. He would try and make it up to me.

17 Q. And did he tell you how he was going to try to make it up  
18 to you?

19 A. No.

20 Q. Did he ever make it up to you in any way?

21 A. No.

22 Q. Mr. Frische, when did you stop working for CCI?

23 A. Approximately the middle of September.

24 Q. Of what year?

25 A. '11.



F5kWmcg4

Frische - direct

1 Q. And did you quit?

2 A. No, sir.

3 Q. Were you laid off?

4 A. Yeah, they were downsizing the project.

5 Q. Now, at the time that you were downsized, was anybody else  
6 downsized?

7 A. Anthony Buffalino and myself only. Oh, and a gentleman  
8 named Campbell.

9 Q. Now let's talk about an average week when you were coming  
10 in to see if we can come up with a total amount of time.

11 Remind me, Mr. Frische. What time would you get to work in the  
12 morning on an average day?

13 A. I would try for 7:15.

14 Q. What time were you signing in?

15 A. 8:00.

16 Q. So were you signing in then 45 minutes before your shift  
17 actually started?

18 A. Yes, sir.

19 Q. Sorry. 45 minutes after you actually started work?

20 A. Yes, sir.

21 Q. You agree with me that's .75 hours?

22 A. Yes, sir.

23 Q. And what time were you leaving on an average day at the end  
24 of the day?

25 A. 5:30.

F5kWmcg4

Frische - direct

1 Q. 5:30. And what time were you signing out?

2 A. 4:30.

3 Q. Is that one hour after you --

4 A. Yes, sir.

5 Q. Now let's talk about lunch. How often during the week were  
6 you taking the full 30-minute lunch break?

7 A. Twice a week.

8 Q. So how many days does that mean that you were not taking a  
9 full 30-minute lunch break?

10 A. Three days.

11 Q. So three days a week, how much time were you taking as a  
12 break?

13 A. Maybe 15 minutes.

14 Q. So if you were taking 15 minutes three times a week, does  
15 that average to about .15 hours per day?

16 A. .1 -- yes, sir.

17 Q. So for a total then, does that mean that on an average day,  
18 you were working approximately 1.9 hours for which you were not  
19 being paid?

20 A. It sounds about right.

21 MR. GLUNT: I have no further questions at this time.

22 THE COURT: Cross-examination.

23 MR. WITTELS: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. WITTELS:

F5kWmcg4

Frische - cross

1 Q. Mr. Frische, you were one of the plumbers that liked  
2 appointments, correct?

3 A. Yes, I liked appointments.

4 Q. Over the canvass method, where you would just go out in the  
5 field and try to find your own jobs?

6 A. Yes. I liked them.

7 Q. Is it your testimony that during your work at CCI, CCI's  
8 Queens office had no policy regarding overtime?

9 A. They had a policy regarding overtime.

10 Q. And what was that policy?

11 A. That with management approval you could get overtime.

12 Q. And management approval was either Charlie or Angelo?

13 A. It, you would call Charlie and he would run it by Angelo  
14 and Angelo would have to O.K., make the final decision.

15 Q. Now, you were asked about if you kept records of your time,  
16 and you said no, correct?

17 A. No, sir.

18 Q. You did keep records of your work?

19 A. Yes, sir.

20 Q. Every day after work, you would make copies of all your  
21 worksheets, correct?

22 A. Yes, sir.

23 Q. And you kept them in your truck?

24 A. Yes, sir.

25 Q. That was not something the company or Mr. Loguidici or

F5kWmcg4

Frische - cross

1 Mr. Solimine required, you to make copies of your work,  
2 correct?

3 A. No, sir.

4 Q. You did it for your benefit?

5 A. No, sir.

6 Q. It wasn't for your benefit?

7 A. No, sir.

8 Q. How many other plumbers waited in line at the copy machine  
9 to make copies of their records for their use?

10 A. Every driver or man who did the paperwork made copies.

11 Q. And you turned in the originals?

12 A. Yes, sir.

13 Q. To the office, correct?

14 A. Yes, sir.

15 Q. And you kept these copies?

16 A. Yes, sir.

17 Q. Prior to going to work for CCI, you owned your own  
18 construction business, correct?

19 A. Yes, sir.

20 Q. And at some point in time, there was a downturn and you  
21 decided to get a job paying you by the hour, correct?

22 A. Steady paycheck, yes, sir.

23 Q. When you owned your own business, you made payroll for your  
24 employees?

25 A. Yes, sir.

F5kWmcg4

Frische - cross

1 Q. You understood the rules about overtime?

2 A. Yes, sir.

3 Q. You understood the reporting requirements of overtime?

4 A. Yes, sir.

5 Q. So from day one on this job, did you feel that you were  
6 being cheated out of time?

7 A. I was more concerned about keeping my job than fighting for  
8 overtime, sir.

9 Q. Did you feel you were being cheated from day one?

10 A. Somewhat, yes, sir.

11 Q. And yet you kept no records of your time?

12 A. No, sir.

13 Q. You knew how records could be kept because you kept them  
14 when you were an employer, right?

15 A. I kept time cards for my employees.

16 Q. You were aware that this lawsuit had been filed while you  
17 were still working for CCI?

18 A. Yes, sir.

19 Q. And knowing that Mike McGlone had filed this lawsuit,  
20 somebody, I think you testified, that you carpooled with,  
21 right?

22 A. Yes, sir.

23 Q. You still didn't keep any records of your time after  
24 learning that he had filed the lawsuit?

25 A. I didn't know what the lawsuit was about.

1 Q. Did you understand that the sign-in sheets, I think you've  
2 been shown a few, were sent to DEP?

3 A. Yes, sir.

4 Q. And it was your responsibility to sign in and out each day,  
5 correct?

6 A. Yes, sir.

7 Q. Nobody could sign in for you, nobody could sign out?

8 A. No, sir.

9 Q. You couldn't sign in for anybody else?

10 A. No, sir.

11 Q. And you understood that DEP relied upon those  
12 sign-in/sign-out sheets?

13 A. I would assume so, sir.

14 Q. During some of your time, you were, in fact, required to  
15 sign the break sheet, correct?

16 A. Later on in the project.

17 Q. And you've looked at a few of those today, correct?

18 A. I haven't seen any of the break sheets, but I'm familiar  
19 with the form.

20 MR. WITTELS: Judge, if I may approach.

21 THE COURT: Yes.

22 MR. WITTELS: Judge, these are in one of the binders.  
23 If you want a loose copy, I can give you that.

24 THE COURT: That's all right.

25 Q. I've handed you what is marked Defendants' Exhibit K. Have

F5kWmcg4

Frische - cross

1 you seen that sheet before?

2 A. Sure.

3 Q. Are these your break sheets from when you worked at CCI?

4 A. Just thumbing through them quickly, if I signed them, yes,  
5 sir, they're my break sheets.

6 Q. So they're the break sheets that you turned in, I believe  
7 your testimony was to Charlie, once a week?

8 A. On Tuesday morning, sir.

9 Q. And it's your testimony that they are incorrect and  
10 inaccurate, correct?

11 A. Yes. It was a means to an end, just hand them the  
12 paperwork.

13 Q. Some of the time, some of the days that you reflect that  
14 you took a break, you actually took a break?

15 A. Yes, for lunch. The lunchtimes, yes, sir.

16 Q. The lunchtime break?

17 A. Yes, sir.

18 Q. Now, on the 15-minute morning break, CCI didn't deduct 15  
19 minutes from your pay on a daily basis for that break, did  
20 they?

21 A. No, sir.

22 Q. Some of the information on the meal break portion, your  
23 testimony, is inaccurate?

24 A. Yes, sir.

25 (Continued on next page)

1 Q. You knew it was inaccurate when you turned it into the  
2 company?

3 A. Yes, sir.

4 Q. You tried to arrive by 7:15, is that right?

5 A. That was the time I would shoot for.

6 Q. During the entire time you worked for CCI, did you always  
7 carpool?

8 A. No, sir.

9 Q. When you carpooled, if you were finished and your riders  
10 weren't, you had to wait around for them, correct?

11 A. No, when they carpooled, they were my partner in the  
12 vehicle.

13 Q. Only your partner?

14 A. Only my partner.

15 Q. You had meetings before 8 o'clock, correct?

16 A. Yes, sir.

17 Q. Was it Charlie or Angelo's policy to wait for all the men  
18 to be there to have a meeting?

19 A. Yes, sir. Charlie would call on a radio and ask whoever  
20 was late where are you. Sometimes we would start without them.

21 Q. Were there some employees who didn't show up prior to right  
22 at 8 o'clock?

23 A. No. It was most every man was there before the scheduled  
24 start time.

25 Q. Was it most every man or was every man there?



F5k3mcg5

Frische - cross

1 A. Every man was there.

2 Q. Most of the jobs that you installed were the five-eighths  
3 and one inch meters, isn't that correct?

4 A. No, sir.

5 Q. What would you say is the majority of the meters that you  
6 installed?

7 A. Three-quarter, one inch.

8 Q. Three-quarter, one inch?

9 A. Five-eighths was a very small section of the project.

10 Q. As was the two inch?

11 A. Obviously there's not as many big buildings as there are  
12 residential properties.

13 Q. How many two inch meters did you install the entire time  
14 you worked for CCI?

15 A. I couldn't tell you. All my worksheets are present.

16 Q. You have no idea?

17 A. Maybe 50.

18 Q. In the entire two-and-a-half years?

19 A. It could be 100. I have no idea.

20 Q. A good day for you was 10 meters, correct?

21 A. Working solo, 10 meters.

22 Q. At the end of the day, it took you 40 minutes to wrap up  
23 your work once you got back to the Ridgewood office, is that  
24 right, half hour, 45 minutes?

25 A. No, sir. I would leave the field at 20 after. With

1 traffic I would get back, I could get back at 20 to, quarter  
2 to. It is a very busy time of day in Queens and then I would  
3 start my week.

4 Q. Did Angelo ever tell you that you needed to be back so that  
5 you could clock out at 4:30?

6 A. No, sir. Angelo was never there.

7 Q. So Angelo wasn't there to see that you worked past 4:30?

8 A. Mr. Solimine was not there when we got back at 4:30,  
9 5 o'clock.

10 Q. Was Charlie there?

11 A. Charlie left directly from the field and was rarely back in  
12 the shop.

13 Q. So neither one of your supervisors, according to your  
14 testimony, knew that you were leaving past 4:30 because they  
15 weren't there to see it?

16 MR. GLUNT: Objection.

17 THE COURT: Sustained.

18 A. On most occasions.

19 THE COURT: No, I sustained the objection.

20 Q. You're crystal clear that Mr. Solimine wasn't there past  
21 4:30 when you would get back past 4:30?

22 A. Most of the times.

23 Q. Neither was Mr. Loguidici?

24 A. He would leave from the field a majority of the time, sir.

25 Q. You testified that Mr. Solimine required you, made you,

F5k3mcg5

Frische - cross

1 take two for the team, is that right?

2 A. Yes, sir, he did.

3 Q. And besides Mr. Solimine, did you ever complain about this?

4 A. I complained to Mr. Loguidici.

5 Q. What did Mr. Loguidici tell you?

6 A. The day I worked alone by myself, he came out to help me  
7 and told me I didn't have to do this. I told him I needed my  
8 job.

9 Q. You testified about washing the car, changing the oil. Did  
10 you ever submit time slips to anybody at CCI asking to be paid  
11 for the time that you took care of the car?

12 A. Only the receipts for materials, sir.

13 Q. So you never asked anybody to pay you for time?

14 A. No, sir.

15 Q. As part of having the car you got a gas card, right?

16 A. Yes, sir, with a limit.

17 Q. That gas card was only valid between the hours of eight and  
18 four, wasn't it?

19 A. Yes, sir.

20 Q. So you could only fill up between eight and four if you  
21 were going to charge it to the company, right?

22 A. Yes, sir.

23 Later when we worked on the --

24 MR. WITTELS: Objection. There is no question in  
25 front of him.

1 THE COURT: Yes.

2 Q. You knew you were allowed a half hour for lunch.

3 A. Yes, sir.

4 Q. There was no set time for you taking your lunch, right?

5 A. When you had time.

6 Q. So you had the discretion to take your break whenever you  
7 felt like it during the day?

8 A. Yes, sir.

9 Q. It is your testimony that on the incentive to go home  
10 early, maybe five or six times during your career, correct?

11 A. Yes, sir.

12 Q. Do you agree that there is a difference between hours  
13 worked and hours paid? There may be a difference between hours  
14 worked and hours paid?

15 A. Yes, sir.

16 Q. You got paid days off, correct?

17 A. My money. It was my money.

18 Q. You were paid for days that you didn't come in if you chose  
19 to get paid, correct?

20 A. Yes, sir.

21 Q. On those days that you got paid for taking the day off, you  
22 did not work.

23 A. Yes, sir.

24 Q. Did you avail yourself of health insurance or did you waive  
25 that?

1 A. I waived it. It was not worth it.

2 MR. WITTELS: Nothing further, Judge.

3 THE COURT: Redirect?

4 MR. GLUNT: Very briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. GLUNT:

7 Q. Mr. Frische, you were asked about the 15 minute morning  
8 break that's reflected on your break sheets. Do you remember  
9 that?

10 A. Yes, sir.

11 Q. You were asked whether CCI deducted that 15 minutes from  
12 your paycheck, correct?

13 A. Yes, sir.

14 Q. Are you seeking compensation for that 15 minutes in this  
15 case?

16 A. No, sir.

17 Q. You were also asked about receipts for the materials that  
18 you used in oil changes, do you remember that?

19 MR. WITTELS: Judge, I'll object. I don't believe  
20 that accurately --

21 A. He didn't ask me. He asked me if I kept track of time for  
22 when I did that.

23 Q. Oh. Well, did you submit receipts for the oil changes that  
24 you performed on company cars?

25 A. Yes, sir. For the material, yes, sir.

1 Q. Did you submit receipts that had the date and time on them  
2 as well?

3 A. Yeah, the Walmart receipt says the date and the time when  
4 you purchase the material.

5 Q. You submitted that to CCI, correct?

6 A. Yes.

7 Q. You were asked about the days off that CCI paid you,  
8 correct?

9 A. Yes, sir.

10 Q. I believe that when you were asked about that, you said  
11 something to the tune of "it was my money." Do you remember  
12 that?

13 THE COURT: No, you may recall there was an objection  
14 so that's not in evidence.

15 MR. GLUNT: Okay.

16 Q. Mr. Frische, did CCI deduct money from your paycheck to  
17 account for the amount that it paid you for the days that you  
18 were off?

19 A. Yes, sir.

20 Q. Did it deduct a certain amount from every day that you  
21 worked to make it whole for the money it was paying you on the  
22 days that it gave you off?

23 A. Yes, sir.

24 MR. GLUNT: I have nothing further, your Honor.

25 THE COURT: Anything else?

1 MR. WITTELS: No recross, Judge.

2 THE COURT: Thank you very much. You may step down.

3 THE WITNESS: Yes, sir.

4 (Witness excused)

5 THE COURT: Please call your next witness.

6 MR. GLUNT: Plaintiffs call Joseph Frangiosa.

7 (Witness sworn)

8 THE DEPUTY CLERK: Please be seated. State your name  
9 and spell it slowly for the record.

10 THE WITNESS: My name is Joseph Frangiosa.

11 F-R-A-N-G-I-O-S-A.

12 THE COURT: I think in your case, maybe we can push  
13 that a little.

14 THE WITNESS: I apologize, your Honor. Sorry about  
15 that.

16 JOSEPH FRANGIOSA,

17 called as a witness by the Plaintiff,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GLUNT:

21 Q. Good afternoon, Mr. Frangiosa. Mr. Frangiosa, do you know  
22 the defendant Contract Callers?

23 A. Yes, I do.

24 Q. How do you know them?

25 A. I worked for them.

F5k3mcg5

Frangiosa - direct

1 Q. Are you a plaintiff in this case?

2 A. Yes, I am.

3 Q. Mr. Frangiosa, do you have any plumbing experience?

4 A. Yes, I do.

5 Q. How much plumbing experience do you have?

6 A. Over 25 years.

7 Q. In that time, have you ever been a member of a plumbers  
8 union?

9 A. Yes, I have. Local Union Number 1, New York City.

10 Q. Have you ever been a member of any other unions?

11 A. Yes, I have.

12 Q. What unions have you been a member of?

13 A. The machinists union.

14 Q. Have you received any formal training or attended any  
15 schools for plumbing?

16 A. Yes, I have.

17 Q. What formal training or schooling have you received?

18 Can you push the mic down a little bit.

19 A. Is that better? Is that better?

20 Q. That's better.

21 A. Sound check. I'm sorry.

22 I just have -- yeah, back to the training. Through  
23 the union, I went through a five-year apprenticeship program.  
24 During that time, I was schooled in my skills both on-the-job  
25 and off-the-job training. Also, I went to Berk Trade School



F5k3mcg5

Frangiosa - direct

1 which was a school I paid for privately to further my skills in  
2 regards to plumbing. And I'm also cross trained in HVAC, which  
3 is heating and air conditioning. That was an additional  
4 450-hour course that I took on my own.

5 Q. Have you received any plumbing certifications?

6 A. Yes. I have at least over 20 something certificates in  
7 order for me to work every day.

8 Q. How did you find out about the CCI job?

9 A. I was looking for work, and my wife actually found the ad,  
10 and she said they're looking for a plumber to work on a water  
11 meter project, and they were looking for someone that was  
12 bilingual.

13 Q. Are you bilingual?

14 A. I'm actually trilingual. I speak Spanish and Italian.

15 Q. Did you apply to the CCI job?

16 A. Yes, I did.

17 Q. Did you receive the CCI job?

18 A. Yes, I did.

19 Q. Who interviewed you for the CCI job?

20 A. The initial person was Charlie Loguidici. I went to their  
21 office in Ridgewood, Queens, located on Weirfield, did an  
22 interview, and I was hired on the spot.

23 Q. What did you understand the job to be?

24 A. From what they gave me from the rough description, it was  
25 to be dealing with the public, and sensitive information about

1 them, removal and installation of a water meter, and also  
2 removing the old manual type of reading the meters and  
3 installing these new computer devices.

4 Q. When did you start work for CCI?

5 A. I believe in February of '09.

6 Q. Did you receive any kind of additional training before you  
7 started work?

8 A. Yes, we did. We were trained by Michael Roche who was the  
9 project manager for D.E.P., in regards to this project in  
10 Brooklyn. Along with inspectors, there was either three or  
11 four of them in the classroom with us.

12 Q. Mr. Frangiosa.

13 A. Yes.

14 Q. Have you ever been arrested?

15 A. Yes, I have.

16 Q. When did that occur?

17 A. September of '08.

18 Q. What were you arrested for?

19 A. For bribery.

20 Q. Was that for receiving a bribe or --

21 A. Receiving.

22 Q. Where were you working when that happened?

23 A. Plumbing supervisor for the federal prison, the  
24 Metropolitan Correctional Center.

25 Q. How did you plead in response to those charges?

F5k3mcg5

Frangiosa - direct

1 A. Guilty.

2 Q. After you pled guilty, did you ultimately tell CCI?

3 A. Yes, I did.

4 Q. Did you serve any prison time?

5 A. Yes, I did.

6 Q. How long did you serve in prison?

7 A. Five days.

8 Q. Five days?

9 A. Five days.

10 Q. Did you tell Mr. Solimine about that?

11 A. Mr. Solimine and Charlie were aware of it.

12 Q. Why did you tell them?

13 A. I told them because I needed to go and serve my prison  
14 term, and when I put in my vacation slip they asked me why, and  
15 I told them because I need to go to prison for five days.

16 Q. Did you do that while you were on the CCI job?

17 A. Yes.

18 Q. Prior to your arrest in 2008, had you ever been arrested  
19 for anything else?

20 A. No, counselor.

21 Q. After your arrest, in 2008, have you ever been arrested for  
22 anything since?

23 A. No, counselor.

24 Q. Mr. Frangiosa, you swore an oath to tell the truth today.

25 A. Yes, sir.

F5k3mcg5

Frangiosa - direct

1 Q. Are you aware it is also a crime to give false testimony  
2 under oath?

3 A. Yes.

4 Q. Do you intend to tell the truth today?

5 A. Yes, I do.

6 Q. Let's talk about your typical day of work for CCI. Where  
7 was CCI's office located?

8 A. Ridgewood, Queens, on Weirfield.

9 Q. Where were you living at the time?

10 A. West Hempstead, Long Island.

11 Q. When you worked in the CCI project, when would you leave to  
12 go to work in the morning?

13 A. I would leave between 6 a.m. to 6:30 a.m. in the morning.

14 Q. Did you ever carpool with anyone else?

15 A. Yes, I did. I had a partner.

16 Q. Who was your partner?

17 A. Sal Fischetti.

18 Q. Would you pick him up for work?

19 A. Yes, I would leave my home in Nassau County and drive into  
20 Queens where he lived.

21 Q. Where did he live?

22 A. He lived Springfield, Bayside, Queens.

23 Q. When would you arrive at the Ridgewood office?

24 A. We would plan to arrive at the Ridgewood office anywhere  
25 around seven, 7:15 the latest.

1 Q. Where would you park when you got there?

2 A. If there was no proper parking spaces, we would double park  
3 on the street.

4 Q. What time did the doors open to the Ridgewood office?

5 A. Any given day it was somewhere around 7 o'clock.

6 Q. What time was the shift scheduled to start?

7 A. We were told to start at 8 a.m.

8 Q. What was the first thing that you do when you arrive at the  
9 CCI facility?

10 A. If it was when we arrived first thing on a Monday morning,  
11 our vehicles would be checked to make sure they were clean.  
12 Then we would begin preparing for the day.

13 Q. Who would check your vehicles to make sure they were clean?

14 A. If Angelo was in that day, it would be Angelo. If Charlie  
15 was there, it would be Charlie. Or they would have one of  
16 their warehouse supervisors, a gentleman by the name of I think  
17 his name was Kelly. I don't really remember anything else  
18 about him.

19 Q. You said Monday morning. Would they check your vehicles  
20 every day or just on Monday morning?

21 A. Just Monday mornings, to make sure it was clean for the  
22 week.

23 Q. Apart from the vehicle inspections on Monday, every other  
24 day, what would be the first thing you did when you arrived at  
25 the office?

1 A. Oh, we would go and retrieve our CN3, which was our  
2 handheld computer for the daily route sheet. And then  
3 sometimes we were given an additional computer if we had  
4 appointments that day. And it was our responsibility to make  
5 sure that all our paperwork and the computers matched so that  
6 we could plan out our day accordingly and how we would run our  
7 route with appointments if we had appointments. And if it was  
8 canvassing, we would try to figure out the best way to canvass,  
9 to knock on doors. And on top of that, we would figure out  
10 roughly what difference size extra meters, if we needed. We  
11 had to require wiring, because in order to connect the device  
12 to the meter we needed a certain wire, we had to make sure we  
13 had all our tools and anything that went with it, like long  
14 drill bits, anything that we needed that we would deplete  
15 during the week, we would have to restock on Monday and every  
16 day after that.

17 Q. So let's take that a piece at a time. You mentioned  
18 checking the CN3s and the route sheet?

19 A. Yes.

20 Q. Were there any problems when the CN3 didn't match the route  
21 sheets?

22 A. Yes.

23 Q. What would have happened if you hadn't checked the CN3  
24 against the route sheet before you went in the field?

25 A. What did happen is you would go in thinking that you're on

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1 a private home doing an install, and it would turn out that  
2 these people now were getting the job that would be for the  
3 building around the corner. And when they received the \$25,000  
4 water bill, they weren't happy about it. So it was up to us to  
5 verify and check and make sure that residential were  
6 residential and the proper sizes, and commercial were  
7 commercials. And after a while, we even recognized that if it  
8 was meters that were going to be completely replaced or  
9 partially replaced.

10 Q. Was it pretty important that you check the CN3s and the  
11 route sheets?

12 A. Yes.

13 Q. You also mentioned loading up your truck?

14 A. Yes.

15 Q. You mentioned tools. What kind of tools would you load  
16 into your truck?

17 A. If we had to go and do the larger meters, it would require  
18 to make sure we had saws to cut the old rusted bolts, they were  
19 a lot larger unit. Also we had drills with 2 foot to like 3  
20 foot bits that we would drill through concrete to run new  
21 wiring if they were damaged.

22 And we also had a machine that would, if the valve  
23 wasn't working, it was called a freeze machine. And you would  
24 actually be able to place it on the pipe, and after a certain  
25 amount of time, after you were trained in how to use it, you

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1 would be able to freeze the line to go and replace a valve and  
2 install the new meter.

3 Every day, as needed, these were certain items and  
4 tools that you needed to load on the vehicle.

5 Q. You mentioned drill bits. Why would you have to drill  
6 through a wall?

7 A. Well, on a residential home, pretty much, you just going  
8 straight in. The thickness of a house wall is 12 inches,  
9 16 inches depending. But we had -- I did a lot of commercial  
10 properties, where you would have meters that would be maybe two  
11 or three floors underground. And you would have to come in on  
12 an angle and drill two or three feet to get from the sidewalk  
13 or from the actual foundation wall into where you would be able  
14 to drop the wire in, and then wire to these meters and these  
15 locations.

16 Q. What were you wiring all the way down to that meter?

17 A. The actual -- an actual physical wire, the size of, you  
18 know, like a regular wire that would actually attach to the  
19 meter, and the other end was connecting to the electronic  
20 device.

21 Q. The electronic device, where would you put that?

22 A. Outside the building.

23 Q. So you would run a wire from the outside of the building  
24 with the electronic device, all the way down into the water  
25 meter?



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1 A. Yes.

2 Q. How long would it take you to load up your truck, check  
3 your routes and get your CN3?

4 A. About 45 minutes to an hour.

5 Q. If you finished early, if it only took you 25 or 30 minutes  
6 that day, would you wait around the office until 8 o'clock or  
7 would you leave early to get started on your routes?

8 A. No. The key thing was, we were told by Angelo and Charlie  
9 that we needed to be out in the field and have our first job  
10 started by eight.

11 Q. Before you left the Ridgewood office, did you have to punch  
12 a clock or sign in in any way?

13 A. No.

14 Q. Did you ever sign in?

15 A. I signed in. Yes, I'm sorry. Yeah, we would sign in on a  
16 time sheet.

17 Q. What time would you sign in each morning?

18 A. 8 a.m.

19 Q. Was that accurate?

20 A. No.

21 Q. Why did you sign in at 8 o'clock if it wasn't accurate?

22 A. I was told by Charlie and Angelo that that's what I'm  
23 supposed to do.

24 Q. Were you told that on your first day of work or some later  
25 time?

1 A. After training, a couple of weeks after training when we  
2 actually started the project, we were told this is your start  
3 time.

4 Q. Do you think it was right for you to sign in so long after  
5 you got there?

6 A. No.

7 Q. Why did you do it?

8 A. Because I was told to, and I needed the work. Because, you  
9 know, the economy was bad.

10 Q. Did you write 8 o'clock on that time sheet to benefit  
11 yourself in any way?

12 A. No.

13 Q. Would you have written 8 o'clock on that time sheet if  
14 Mr. Solimine and Mr. Loguidici had not told you to do that?

15 A. If they told me not to do it?

16 Q. If they hadn't told you that you had to write 8 o'clock,  
17 would you have done it anyway?

18 A. No, I would have written in the correct time that I  
19 arrived.

20 Q. Did you make more money by writing in 8 o'clock rather than  
21 seven or 7:15?

22 A. No.

23 Q. Did you ever attend meetings while working at CCI?

24 A. Yes.

25 Q. When did those meetings take place?

1 A. In the morning.

2 Q. How did you find out there was going to be a meeting?

3 A. Usually Charlie would come in, and just at the spur of the  
4 moment just tell everyone, oh, stay back, don't leave, we're  
5 having a meeting.

6 Q. Was attendance mandatory at those meetings?

7 A. Yes.

8 Q. What time would you sign in if you were attending one of  
9 those mandatory meetings?

10 A. 8 a.m.

11 Q. Did the meeting start before 8 a.m.?

12 A. Yes.

13 Q. Would you still sign in at 8 a.m.?

14 A. Yes.

15 Q. How frequently did these meetings take place?

16 A. In the beginning they were more or less every few days when  
17 the project was new. And then after that, it became like a  
18 weekly meeting, it was all the safety -- was called a safety  
19 meeting.

20 Q. Did you ever see Mr. Solimine in the office before  
21 8 o'clock?

22 A. Yes.

23 Q. Did you ever see Mr. Loguidici in the office before  
24 8 o'clock?

25 A. Yes.

1 Q. Did they ever speak to you in the morning?

2 A. Sure, all the time.

3 Q. Did Mr. Solimine ever tell you that he couldn't sign your  
4 sign-in sheets because he knew that you had gotten in before  
5 8 o'clock?

6 A. No.

7 Q. Assuming there was no meeting, what time would you leave  
8 the Ridgewood office to go out in the field?

9 A. I tried to get out of there as soon as possible. 7:30,  
10 quarter to eight the latest, depending how far we had to go to  
11 drive.

12 Q. What time would you have signed in that morning?

13 A. 8 o'clock.

14 Q. What were your responsibilities once you left the facility?  
15 What did you have to do in the course of a day?

16 A. If I had appointments, I would have to contact the customer  
17 to make sure, to verify that it was still an appointment,  
18 because we had instances that people would be on a list for  
19 appointments and it was completely the wrong day or the wrong  
20 time slot. We had to safely drive the vehicle there. Then get  
21 to the job site or the first job. And then we would go in,  
22 start the process of doing a meter and MTU install.

23 Q. You mentioned appointments and canvassing. Did you have a  
24 choice about whether you were going to do appointments or  
25 canvassing?

1 A. No.

2 Q. Who decided whether you were going to do canvassing,  
3 appointments, or some combination of the two?

4 A. Whoever was doing the routing. That would be the person  
5 that would come in early in the morning, so it was either the  
6 warehouse supervisor, or Angelo himself would figure -- they  
7 would just say, well, who has appointments and who has  
8 canvassing. We had no choice in that.

9 Q. How long would it take you to install a residential water  
10 meter if everything went well?

11 A. If everything went well, one person by themselves, start to  
12 finish, somewhere between 20 minutes to a half hour. That's on  
13 a smaller meter.

14 Q. What about one of those larger commercial meters, how long  
15 would that take you to swap in and out?

16 A. One person? Depending on the location, you probably  
17 talking about an hour and a half, two hours.

18 Q. What was the earliest time that appointments were  
19 scheduled?

20 A. They had 8 o'clock, they had -- they had two time slots.  
21 Eight to whatever, and then there was an afternoon. But  
22 sometimes some of them would be earlier than 8 a.m. on special  
23 requests.

24 Q. You testified earlier you worked in a team, is that right?

25 A. In the beginning of the project, yes, with Sal Fischetti.

1 Q. When you were working with Sal Fischetti, how many water  
2 meters would you replace in a day?

3 A. In order -- the monetary value they told us we needed to do  
4 at least eight to 10 water meters, and a total of 16 completed  
5 jobs.

6 Q. The jobs that were not water meters were what kind of jobs?

7 A. Would be just a computer job only, but which was involved  
8 also.

9 Q. What would you have to do on a computer job only?

10 A. Well, we would have to do is -- even on all the jobs, you  
11 would have to verify the serial number which is stamped on  
12 every water meter. You'd have to verify the seal cap, that's  
13 the little round circle that actually seals the meter, and we  
14 also have to verify that the meter read correctly, that all the  
15 numbers were present. And we had to make sure that it was also  
16 wired correctly. Because in order for the computer box to  
17 work, three wires had to be connected to the actual top of the  
18 water meter, and all of them had different wiring  
19 configurations.

20 Q. So, if you were working by yourself?

21 A. Yes.

22 Q. How many water meters would you replace in a day?

23 A. Four to six.

24 Q. Did you have any kind of quota or performance target that  
25 you had to meet?

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1 A. Yes.

2 Q. What was that quota or target?

3 A. It was a minimum of eight jobs, and they said monetary wise  
4 was the optimum would be five, five meters, five water meters  
5 with the computer box, and three computers by themselves. That  
6 would just cover the day. That's what we were told.

7 Q. Did that quota change at any time?

8 A. Yeah. Yes.

9 Q. Who told you what the quota was?

10 A. Charlie and Angelo.

11 Q. Do you ever have any difficulty in filling the quota?

12 A. Yes.

13 Q. Mr. Frangiosa, you have a lot of plumbing experience?

14 A. Yes, sir.

15 Q. Are you pretty good about swapping out meters pretty  
16 quickly?

17 A. Yes.

18 Q. Have you had significant experience swapping out meters  
19 quickly?

20 A. Yes, sir.

21 Q. What would happen to you if you didn't meet your quota?

22 A. I would be verbally abuse.

23 Q. By who?

24 A. By Angelo and Charlie.

25 Q. How long was your lunch break supposed to be when you

1 worked at CCI?

2 A. 30 minutes, half hour.

3 Q. How many days a week would you take that full 30 minute  
4 lunch break?

5 A. I would try at least one or two days a week.

6 Q. Why wouldn't you do it every day?

7 A. Because of just a hectic schedule of trying to maintain  
8 either a minimum of doing eight jobs or just trying to fill the  
9 quota for the day.

10 Q. How many days would you not take that full lunch break?

11 A. Three -- three -- it would be three days on a five-hour  
12 workweek, and when we worked six days, it was probably more  
13 like four.

14 Q. On days that you didn't take a full lunch break, would you  
15 eat anything?

16 A. Sure. I would snack out of my lunch cooler.

17 Q. Would you bring that cooler from home?

18 A. Yes.

19 Q. How long would it take you to eat the lunch you brought in  
20 your cooler?

21 A. I would be snacking as I'm driving. So maybe a banana as  
22 I'm driving to one place. Maybe stop for a minute while I was  
23 doing some paperwork and eat a yogurt. Maybe eat a half a  
24 sandwich. Five minutes there, five minutes there. I mean.

25 Q. Fair to say about five or 10 minutes?



1 A. Yeah. Sure.

2 Q. Did CCI require you to document your lunch breaks in any  
3 way?

4 A. Yes.

5 Q. What documentation did you need to give CCI about your  
6 lunch breaks?

7 A. They came up with a break sheet they called it.

8 Q. Who did you have to give a break sheet to?

9 A. You had to give it to Charlie Loguidici who in turn would  
10 give it to Angelo.

11 Q. Were your break sheets that you submitted accurate?

12 A. No.

13 Q. Why weren't they accurate? Why did you submit an  
14 inaccurate break sheet?

15 A. Because they were handed to us on a Tuesday morning where  
16 Charlie would come in, he would just tell us to fill them out,  
17 and if you didn't fill it out or refused to, he says he didn't  
18 really care what was written on them, just write something so  
19 that you can go to work.

20 Q. Did you ever tell Mr. Solimine or Mr. Loguidici that you  
21 were not taking a full lunch break?

22 A. Yes, I did.

23 Q. Who did you tell?

24 A. I told actually both of them on many occasions.

25 Q. Did they tell you anything in response?

1 A. Yes.

2 Q. What did they tell you?

3 A. They said look at the size of you. You can afford to lose  
4 a few meals.

5 Q. Which of them said that to you?

6 A. Excuse me?

7 Q. Which of them said that to you?

8 A. Both of them. Actually they were standing together when  
9 that -- that one verbal came out of -- yeah.

10 Q. What message did you take from that?

11 A. I was like basically, you know what, okay. So this is  
12 falling on deaf ears, and I'll keep filling out your break  
13 sheets.

14 Q. After you told Mr. Solimine and Mr. Loguidici that you  
15 weren't taking your lunch breaks, did they still take your  
16 break sheet?

17 A. Yes.

18 Q. On average, when would you return to the Ridgewood office  
19 at the end of the day?

20 A. Probably it was usually always after 4:30, quarter of five.

21 Q. Where would you park your truck when you arrived?

22 A. Same thing that we would do in the morning. If there was  
23 no parking spot, we would have to double park on the street.

24 Q. What was the first thing you did when you got back?

25 A. First thing that we did when we got back was, priority was

1 to unload any water meters that we had replaced, and along with  
2 that we had to document on one sheet, it was called a meter  
3 replacement sheet I think. And we had to document all the  
4 meters with their serial numbers matched up to where we removed  
5 them, we would have to go into the shop, lay them out, and then  
6 wait for the supervisor to verify that the meters that we were  
7 giving him were the ones that were on our paperwork. Then,  
8 only then were we allowed to continue, you know, finishing the  
9 end of the day.

10 Q. Do you know what CCI did with those meters?

11 A. They used to put them in these big cardboard boxes. They  
12 were like these monster boxes, bigger than what I'm sitting in,  
13 and they used to fill them up and they used to disappear and I  
14 don't know where they went.

15 Q. Then after you unloaded all of your meters and filled out  
16 your meter sheets, what else would you do?

17 A. I would have to hand in one or two computers and make sure  
18 I told the warehouse person if something happened, and just  
19 give them a little bit of a run down on if there was something  
20 we couldn't do or if we found some bad addresses. After we  
21 were done with that, then we went to this back room, the  
22 conference room, and then we would continue all our paperwork.  
23 Just to fine tune all the paperwork from during the day.

24 Q. On average, after you did all of that, when would you leave  
25 work at the end of the day?

1 A. I tried to get out about a quarter after five, 5:30.

2 Q. Did you sign out before you left?

3 A. Yes, I did.

4 Q. What time would you sign out at?

5 A. At 4:30.

6 Q. If you were leaving at 5:15, why would you sign out at  
7 4:30?

8 A. Once again, Angelo and Charlie said that you're only going  
9 to get paid between the hours of eight to 4, 30 and 4:30 is  
10 when you're signing out.

11 Q. Were there ever any circumstances in which you would sign  
12 out after 4:30?

13 A. Yes.

14 Q. What sort of circumstances would that be?

15 A. If it was an emergency repair or something had broken or to  
16 go assist another crew, that was the only time that we were  
17 able to stay late and work.

18 Q. Under those circumstances, would you receive approval for  
19 your --

20 A. Yes, yes, Charlie -- we would ask Charlie who in turn would  
21 ask Angelo and in turn we would get the -- if we did get the  
22 approval.

23 Q. Did he ever approve your overtime?

24 A. Yes.

25 Q. Was there any reason why he would approve -- why would you

1 do more of that than anybody else?

2 A. Because a lot of times when things were broken, they needed  
3 a plumber there that was experienced with doing the repairs in  
4 a timely fashion, and also comfortable working around the old  
5 plumbing systems. So that's why they would ask me to go there.

6 Q. Were you pretty comfortable working around those old  
7 plumbing systems?

8 A. Sure, sure.

9 Q. Have you had a lot of experience working on the old  
10 plumbing systems?

11 A. Yes, yes.

12 Q. How late would you get home if you were working until 5:15?

13 A. 5:15 --

14 MR. WITTELS: Objection. Relevance.

15 THE COURT: Sustained.

16 Q. Did you ever write down a time other than 4:30 without  
17 receiving any authorization from Mr. Solimine?

18 A. Yes.

19 Q. What happened when you did that?

20 A. I got verbally chastised over it.

21 Q. Did anything else happen?

22 A. I got -- I believe I got written up. And we had to redo  
23 the time sheets also.

24 Q. Was being written up -- strike that.

25 Did the fact that you were written up for writing down

1 a time other than 4:30 factor into your decision to write down  
2 4:30 on subsequent days?

3 A. Yes.

4 Q. Are you aware of an incentive program that CCI offered?

5 A. Yes.

6 Q. What was the incentive program?

7 A. I wasn't too clear about it, because it never really was  
8 explained to me. It was in regards to if you did more than  
9 eight jobs and more of the meter jobs, and it was above and  
10 beyond what the daily quota was, you were allowed to leave  
11 early.

12 Q. Did you ever leave early under that incentive program?

13 A. Nope, nope.

14 Q. Never?

15 A. Never.

16 Q. Did other people sometimes go home early under the  
17 incentive program?

18 A. I guess so.

19 Q. Did most people go home, to your knowledge, did most people  
20 go home early on most days?

21 A. I don't know.

22 Q. Were you ever asked to redo a time sheet?

23 A. Yes.

24 Q. How many times?

25 A. That I recall, at least two or three times.

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1 Q. Were you ever told why you were doing that?

2 A. Yes.

3 Q. What were you told?

4 A. It was said that D.E.P. didn't like them faxing it over,  
5 and that we had to sign from this day forward in blue ink  
6 because D.E.P. wanted to check the sign-in sheet in the morning  
7 after we started our day.

8 Q. What kind of vehicle did you use when you were working for  
9 CCI?

10 A. A little Suzuki crossover.

11 Q. Did you drive that truck to and from work every day?

12 A. Yes, I did.

13 Q. Did you do any maintenance on that truck?

14 A. Yes.

15 Q. What maintenance did you do?

16 A. Washing it, oil changes, repaired a few flat tires.

17 Q. How often would you wash that car?

18 A. Once a week. Mandatory.

19 Q. You say it was mandatory. Why did you do it every single  
20 week?

21 A. Because I was -- we were told that if the vehicle wasn't  
22 clean on Monday morning, that you could just turn around and go  
23 home.

24 Q. How often would you change the oil in that car?

25 A. I was -- at 3,000 miles I was probably changing it about

1 every three or four months.

2 Q. Did you ever change the oil while you were signed in during  
3 the week?

4 A. No.

5 Q. Did you ever wash the car while you were signed in during  
6 the week?

7 A. No.

8 Q. Did you ever fill out time sheets for the time you spent  
9 maintaining the company car?

10 A. No.

11 Q. Did it ever occur to you that they would accept time sheets  
12 for the time you spent working on the car?

13 A. I asked a few times and they told me don't even bother.

14 Q. Who told you that?

15 A. Angelo and Charlie.

16 Q. Have you ever met Tim Wertz?

17 A. Yes.

18 Q. Have you ever met Mike Maguire?

19 A. Yes.

20 Q. Did Mr. Solimine or Mr. Loguidici ever tell who you their  
21 bosses were?

22 A. Yes.

23 Q. Who were their bosses?

24 A. Angelo and Charlie's direct boss was Mr. Maguire, who  
25 was -- it was his project. I guess project manager in charge



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1 of the project that we were working on. And then they said  
2 after Mr. Maguire was Mr. Wertz, he was the owner of the  
3 company.

4 Q. Did you ever complain to Mr. Solimine or Mr. Loguidici that  
5 you weren't being paid properly?

6 A. Yes.

7 Q. What did they tell you?

8 A. That CCI doesn't really care about whatever. We're going  
9 to pay you what we feel like and just keep working.

10 Q. Did you ever complain to Mr. Maguire that you weren't being  
11 paid properly?

12 A. Yes, I did.

13 Q. How did you complain?

14 A. I wrote a letter to him. I found his information and  
15 Mr. Wertz's information on their website, and I e-mailed them,  
16 and brought up four points in regards to what was going on and  
17 trying to help them and inform them of what a prevailing wage  
18 job should entail. And I also spoke to Mr. Maguire a few times  
19 via telephone. Company work phone.

20 Q. How did you get Mr. Maguire's telephone number?

21 A. It was given to us.

22 Q. By who?

23 A. By Charlie Loguidici.

24 Q. Did he tell you why he was giving you Mr. Maguire's  
25 telephone number?

1 A. Well, he said that if you're not getting any answers with  
2 Angelo, then you need to go to the next step. And I said,  
3 well, what is the next step? And he gave me Mr. Maguire's  
4 phone number.

5 Q. I'd like you to take a look at Defendant's Exhibit OO.

6 A. I see it.

7 Q. Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. The e-mail that I sent to Mr. Maguire.

11 MR. GLUNT: Permission to approach, your Honor?

12 THE COURT: Yes.

13 Q. There's two pages.

14 A. Thank you.

15 Q. Did you send this letter in connection with your job?

16 A. Yes.

17 Q. Was this letter an accurate account of the facts as you  
18 understood them at the time?

19 A. Yes.

20 MR. GLUNT: We would like to move into evidence right  
21 now Defendant's Exhibit OO.

22 MR. WITTELS: No objection, Judge.

23 THE COURT: Received.

24 (Defendant's Exhibit OO received in evidence)

25 Q. Mr. Frangiosa, why did you write this letter?

1 A. I wrote this letter because I saw that my moneys weren't  
2 being paid correctly, I brought it to Mr. Solimine's attention.  
3 And he basically told me it is what it is, and that this money  
4 was being held up by D.E.P. and any virtual money. And he said  
5 that corporate was handling it.

6 Q. How many issues did you raise in this letter?

7 A. Four issues, sir.

8 Q. What was the first issue that you raised?

9 A. The first issue I raised was in regards to our supplemental  
10 benefits. That's separate from what we were being paid hourly.

11 Q. What was the problem you raised about the supplemental  
12 benefits?

13 A. That it wasn't being distributed properly.

14 Q. After you wrote this letter, did Mr. Maguire immediately  
15 fix the problem with the supplemental benefits?

16 A. No.

17 Q. Did you have to take any other action to get supplemental  
18 benefits fixed?

19 A. Well, is it okay if I --

20 Q. Yeah.

21 A. What I had said was, at the end of the letter, that I said  
22 that if I couldn't get it resolved, I would have to go by other  
23 means. Which I did.

24 Q. What were those other means?

25 A. I informally called up Mr. Roche at D.E.P. and informed him

1 in regards to that the wages weren't being paid properly.

2 Q. After you informed D.E.P. that CCI wasn't paying its wages  
3 properly, did that fix the problem?

4 A. Yes.

5 Q. What was the second issue you raised with Mr. Maguire?

6 A. In regards to the retro money.

7 Q. What do you mean by retro money? Can you explain what that  
8 issue was?

9 A. Retro money was that they felt that the first day we  
10 started working, we were just supposed to be paid a lower rate  
11 of pay for training purposes. But on a prevailing wage, the  
12 day you started working, training or not training or whatever  
13 it is, you're supposed to be paid the proper amount.

14 Q. When you raised the issue of retro money with Mr. Maguire,  
15 did he then immediately fix the issue?

16 A. No. That was more or less when I called him up. He was  
17 saying that his in-house accountants or human resources, that  
18 they were handling it. And they said no.

19 Q. Did they handle it?

20 A. Not that I am aware of. I mean, it was handled. But, not  
21 until after I made my -- my one call again. The one call that  
22 I made to Mr. Roche, was -- I'm sorry if I'm jumping ahead.  
23 But on all four points, I informed Mr. Roche about this.

24 Q. So you complained about four different issues in this  
25 letter, correct?

F5k3mcg5

Frangiosa - direct

1 A. Yes.

2 Q. After you wrote this letter, you still felt it was  
3 necessary to go to D.E.P. in order to solve those four issues,  
4 is that right?

5 A. Correct.

6 Q. Mr. Frangiosa, when you wrote this letter, why didn't you  
7 mention to Mr. Maguire that you were working hours before and  
8 after your shift was scheduled?

9 A. I didn't mention it to him because I knew that there would  
10 be severe repercussions, and we had informally spoke about it.

11 Q. With whom had you informally spoken?

12 A. I had spoken to Angelo and Charlie about it, and  
13 Mr. Maguire was aware of it.

14 Q. Why did you think there would be serious repercussions if  
15 you mentioned that to him in a letter?

16 A. I would lose my job.

17 Q. Why did you think you would lose your job if you complained  
18 that you were working hours for which you weren't being paid?

19 A. Just having worked with them for a while, I came to  
20 understand that this overtime was a major issue that they  
21 didn't want to address, and that they would do anything in  
22 their power to not address it.

23 Q. Why did you feel comfortable bringing up these four issues  
24 if you didn't feel comfortable bringing up the overtime issue?

25 A. Because these over here were the ones that were blatantly

1 happening. And even with the overtime, it was just that trying  
2 to get -- just trying to get guys to talk about it, a lot of  
3 individuals were fearful, that they didn't want to say  
4 anything.

5 Q. When did you stop working for CCI?

6 A. July of 2011.

7 Q. At any time before that, did you learn that you were going  
8 to be laid off?

9 A. Yes.

10 Q. How did you learn that?

11 A. We came into work one morning and posted by Angelo's office  
12 was a piece of paper that said these individuals, their last  
13 day of work will be July of 2011.

14 Q. So you literally saw the writing on the wall?

15 A. Yes, yes. Yes.

16 Q. Did you speak to Mr. Solimine after you learned that you  
17 were being laid off?

18 A. Yes, I did, quite a few times.

19 Q. What did you say to him?

20 A. I said, well, you know what, in regards to that, I know  
21 that my time with the project's coming to an end. I said, it  
22 would be nice if we can get in touch with Ms. Ann Wheeler at  
23 human resources, I'd like to get the medical package for COBRA.  
24 And other things, you know, like a departing package so I can  
25 start the paperwork working. Because I do have a wife and two

1 children, I wanted to make sure I could, A, know how much my  
2 medical benefits would be to pay for COBRA, and also to receive  
3 any vacation or sick time that I didn't take.

4 Q. Did you speak to him about anything else?

5 A. No.

6 Q. What was his response after you spoke to him?

7 A. He got quite irate with me.

8 Q. What was he irate about?

9 A. That why you bothering me, you're out of here, don't worry  
10 about it. And then he started off on a tangent in regards to  
11 don't even think of trying to get to collect unemployment  
12 because I make sure CCI doesn't have to pay a dime to anyone  
13 that gets laid off or fired. And you'll never see a dime.

14 Q. Did you speak to him about the unpaid hours that you had  
15 worked before and after work?

16 A. Yes, I did, after he became irate with me. I said, well,  
17 Angelo, at least at the end of this project, I now have the  
18 opportunity to figure out how I am going to try to get some of  
19 the unpaid wages.

20 Q. What did he say after he said that?

21 A. He says good luck with that. You're out of here.

22 Q. He terminated you?

23 A. Yes.

24 Q. On the spot?

25 A. On the spot.

1 Q. Mr. Frangiosa, did you keep any personal records of the  
2 time that you actually worked at CCI?

3 A. No.

4 Q. Did it ever occur to you to keep personal records of the  
5 time that you actually worked at CCI?

6 A. No.

7 Q. Did anyone ever tell you it was your responsibility to keep  
8 personal records of time?

9 A. No.

10 Q. Have you ever done that at any other job you ever worked?

11 A. Aside from CCI?

12 Q. Aside from CCI.

13 A. Just keeping -- no. Just keeping records of where I've  
14 worked, but not the actual hours.

15 Q. Let's talk about an average week when you were working for  
16 CCI. See if we can come to a total to the amount of hours that  
17 you were working. What time would you get in in the morning?

18 A. Like I said, between seven and 7:15. Try to get there at  
19 least 45 minutes earlier.

20 Q. If you got in at 7:15, you agree with me that's .75 hours,  
21 three-quarters of an hour?

22 A. Yeah.

23 Q. All right. On average, what time would you leave at the  
24 end of the day?

25 A. About 5:15, 5:30, so 45 minutes, .75.



F5k3mcg5

Frangiosa - direct

1 Q. Okay.

2 A. Counselor, you're writing next to Scott Vaaler. That's not  
3 me.

4 Q. Thank you.

5 A. I'm about a foot shorter than him.

6 Q. Very good. Okay.

7 So you said .75 in the morning, correct?

8 A. Yes.

9 Q. You said .75 in the afternoon?

10 A. Yes, sir.

11 Q. What about lunch, so how frequently would you take a full  
12 30 minute lunch break?

13 A. I would try at least one to two days a week.

14 Q. You're not seeking any recovery for the times that you took  
15 your full 30 minute lunch break, right?

16 A. No, not at all.

17 Q. How many days a week would you not take your full 30 minute  
18 lunch break?

19 A. On a five hour workday, it would be three.

20 Q. How much time would you spend eating on those days?

21 A. Five to 10 minutes.

22 Q. So if you spent 10 minutes eating lunch three days a week,  
23 that comes to about .2 hours. Do you agree?

24 A. Correct.

25 Q. So in total, you take .75, .75, and .2, that's about 1.7

F5k3mcg5

Frangiosa - direct

1 hours a day, do you agree?

2 A. Yes.

3 MR. GLUNT: Thank you very much, Mr. Frangiosa. I  
4 have no further questions.

5 THE COURT: We'll take our midafternoon break now,  
6 ladies and gentlemen, for 15 minutes.

7 (Jury excused)

8 THE COURT: We'll see you after the recess.

9 (Recess)

10 (Continued on next page)

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1 MR. WITTELS: Judge, if I may, before you bring in the  
2 jury, may we approach.

3 THE COURT: There's no need to approach. We can do it  
4 from here.

5 MR. WITTELS: I'm looking at the time, five to four.  
6 By agreement, we indicated to the plaintiff's attorney we would  
7 make Angelo Solimine available today out of turn because that's  
8 how they wanted to call it, and we had no problem with this, so  
9 we arranged for him to be here. He has told us he cannot be  
10 here tomorrow or Friday because his wife is having surgery. I  
11 can't imagine that once we're done with Mr. Frangiosa --

12 THE COURT: We'll take him out of order right now.

13 MR. BHANDARI: O.K.

14 THE COURT: This witness will step down and remain  
15 available, and we'll finish with him either today or tomorrow.

16 MR. GLUNT: I believe, your Honor, that Mr. Frangiosa  
17 is actually starting a new job tomorrow.

18 THE COURT: Then we will find the time to accommodate  
19 him. We're going to take the other witness out of order right  
20 now. Bring him in.

21 Please take a seat.

22 THE WITNESS: Thank you, your Honor.

23 (Witness excused)

24 MR. BHANDARI: Your Honor, I would like to just give  
25 you a transcript of deposition testimony in case we need it.

1 May I approach.

2 THE COURT: O.K.

3 Bring in the jury, please.

4 MR. BHANDARI: Will you explain to the jury what's  
5 happening?

6 THE COURT: I'll explain it to the jury.

7 (Continued on next page)

1 (In open court; jury present)

2 THE COURT: Ladies and gentlemen, before we continue  
3 with the previous witness, for logistical reasons to  
4 accommodate this witness, we will take him now and then we will  
5 return to the witness we were in the middle of.

6 Please swear in the witness.

7 ANGELO SOLIMINE,

8 called as a witness by the Plaintiffs,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BHANDARI:

12 Q. Good afternoon, Mr. Solimine.

13 A. Good afternoon.

14 Q. My name is Rishi Bhandari and I represent the plaintiffs in  
15 this case. Have we ever met before?

16 A. No.

17 Q. Have we ever spoken before?

18 A. No.

19 Q. Are you represented by any lawyers?

20 A. Yes.

21 Q. Who are you represented by?

22 A. Ira Blank.

23 Q. So you are represented by the same lawyers who are  
24 representing CCI, is that correct?

25 A. Yes.

F5kWmgc6

Solimine

1 Q. And you used to work for CCI, is that correct?

2 A. That is correct.

3 Q. You no longer work for CCI?

4 A. That is correct.

5 Q. Who do you currently work for?

6 A. Verizon Communication.

7 Q. How long have you been working for Verizon Communication?

8 A. I actually start my employment this coming Tuesday.

9 Q. You haven't yet started with Verizon?

10 A. No.

11 Q. When did you accept the job with Verizon?

12 A. About, roughly about two and a half weeks ago.

13 Q. Sorry. What was that?

14 A. Two and a half weeks ago.

15 Q. When did you stop working for CCI?

16 A. I stopped working for CCI last week.

17 Q. You stopped working for CCI last week, correct?

18 A. Yes.

19 Q. And Mr. Blank and you entered into an agreement where he's  
20 representing you in the hallway outside, correct?

21 MR. WITTELS: Objection.

22 THE COURT: Sustained. Put some questions about the  
23 facts to this witness, please.

24 BY MR. BHANDARI:

25 Q. Mr. Solimine, when you worked for CCI, did you work on a

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Solimine

1 project called the AMR project?

2 A. Yes, sir.

3 Q. And you were the general manager of the AMR project,  
4 correct?

5 A. Yes, I was.

6 Q. And when you were the general manager of the AMR project,  
7 your duties included setting hours, setting schedules for the  
8 men, correct?

9 A. Yes.

10 Q. And your duties included monitoring the hours for the men,  
11 correct?

12 A. Yes.

13 Q. And your duties included submitting the hours into the  
14 certified payroll system, correct?

15 A. Yes.

16 Q. And your duties included, your duties included monitoring  
17 the compensation schedule, including labor costs, correct?

18 A. Yes.

19 Q. And your duties included having full profit and loss  
20 responsibility for the AMR project, correct?

21 A. Yes.

22 Q. The AMR project was a project with the city, with the  
23 Department of Environmental Protection, correct?

24 A. Yes.

25 Q. And the total revenue to CCI was approximately \$11 million

1 for the AMR project, correct?

2 A. I don't recall if that was the exact number. Around, it  
3 was around that.

4 Q. Do you have a resume that was submitted online to a company  
5 called slideshare.com?

6 A. Excuse me?

7 Q. Did you ever submit a resume online to a company called  
8 slideshare.com?

9 A. I have, I don't recall that at all, no.

10 MR. BHANDARI: I'd like to have marked for  
11 identification Plaintiffs' Exhibit 129. May I approach, your  
12 Honor.

13 THE COURT: Yes.

14 MR. WITTELS: We don't have a copy.

15 Q. Do you recognize this document, Mr. Solimine?

16 A. Absolutely.

17 Q. What is this document?

18 A. This is my resume and cover letter.

19 Q. And did you submit this online?

20 A. Online, yes, but not to slide -- I don't know what that Web  
21 site is.

22 Q. Where did you submit this?

23 A. Career Builder, Monster, LinkedIn.

24 Q. And is the information that's contained in this resume  
25 accurate?



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Solimine

1 A. Yes.

2 MR. BHANDARI: Your Honor, I'd like to have this  
3 entered into evidence.

4 MR. WITTELS: No objection.

5 THE COURT: Received.

6 (Plaintiffs' Exhibit 129 received in evidence)

7 MR. BHANDARI: I'd like to publish a copy of this to  
8 the jury.

9 THE COURT: No.

10 MR. BHANDARI: No?

11 THE COURT: No. I want to move with this witness.  
12 Let's go.

13 Q. Looking at the third page of your, this document --

14 A. Yes.

15 Q. -- does it say that you were the project manager, New York,  
16 New York?

17 A. Yes, it does.

18 Q. And you were the project, and the years were 2008 to 2011,  
19 is that correct?

20 A. That is correct.

21 Q. And you were the project manager for the AMR project,  
22 correct?

23 A. That is correct.

24 Q. Does it say over here automatic meter readings \$11 million?

25 A. It does.

1 Q. Does that refresh your recollection that the total amount  
2 of the contract with the DEP was approximately \$11 million?

3 A. Approximately. Not exact.

4 Q. Now, you testified a few moments ago that you had total  
5 responsibility for the profit and loss of the AMR project for  
6 CCI, correct?

7 A. That is correct.

8 Q. What does that mean?

9 A. Managing the day-to-day operations to make sure we stay  
10 within budget.

11 Q. And you received budgets from the corporate office,  
12 correct?

13 A. Correct.

14 Q. And those budgets included a budgeted amount for labor  
15 costs, correct?

16 A. Correct.

17 Q. And you received those budgets every month from this, from  
18 the corporate office, correct?

19 A. No, that's not correct.

20 Q. How frequently did you receive them?

21 A. Yearly.

22 Q. Oh. You received them only once a year?

23 A. Yes.

24 Q. You never received updates on labor costs?

25 A. As far as budgets are concerned, we did our budgets yearly.

1 That was, that was a set cost that we put in there.

2 Q. Did you ever receive communications from the CCI corporate  
3 office about what the labor costs should be more frequently  
4 than once a year?

5 A. We got P&L statements roughly every month, if not every  
6 other month.

7 Q. So you received P&L statements every month from the  
8 corporate offices, correct?

9 A. Yes.

10 Q. And on those P&L statement, they would include labor costs,  
11 is that correct?

12 A. Yes.

13 Q. So every single month, you received from the CCI corporate  
14 offices what the budget was expected to be for labor costs,  
15 correct?

16 A. Yes.

17 Q. And it was your job to monitor the hours that your men were  
18 working on labor, correct?

19 A. On a day-to-day basis, yes.

20 Q. And you tried to minimize overtime, didn't you?

21 A. Yes.

22 Q. And you told your men starting in April of 2009 that they  
23 had to sign in every single morning for just one month, but  
24 between April of 2009 and May 26 of 2009, you told the men that  
25 they had to sign in every morning at 7:30 a.m., correct?

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Solimine

1 A. I don't recall.

2 Q. I'd like to direct your attention to Exhibit 69.

3 MR. BHANDARI: Can we put that up on the screen,  
4 please. Does everybody have that in front of them?

5 Q. Mr. Solimine, do you recognize this document?

6 A. Yes.

7 Q. And this is an employee sign-in sheet?

8 A. Yes.

9 Q. Is that your signature at the bottom?

10 A. Yes.

11 Q. And did you regularly sign the employee sign-in sheets?

12 A. At the bottom, yes.

13 Q. And did you sign them almost every single day?

14 A. Almost, yes.

15 Q. Did you sign them every single day you were there?

16 A. No. I don't believe so.

17 Q. If you were not there, who was supposed to sign the  
18 employee sign-in sheet?

19 A. Our administrative assistants helped out as well.

20 Q. Who is the administrative assistant?

21 A. We had a number of them. Crystal Kinney was one, Diana  
22 Nieves was another.

23 Q. But every single time she had your name on the bottom where  
24 it said Angelo Solimine, correct?

25 A. I'm sorry?

F5kWmgc6

Solimine

1 Q. Do you see your name at the bottom?

2 A. I do.

3 Q. Next to your signature?

4 A. I do.

5 Q. Every single time she signed your name at the bottom,  
6 correct?

7 A. In the middle, yes, but sometimes she signed on contractor  
8 representative line.

9 Q. And she signed on your behalf?

10 A. Yes.

11 Q. Now, can you read the line above the signature?

12 A. Yes.

13 Q. What does it say?

14 A. "I hereby certify that the above information is true and  
15 correct and represents all persons employed by my firm on the  
16 above project."

17 Q. So, Mr. Solimine, you were certifying that the time in that  
18 everybody signed in to was correct?

19 A. That's correct.

20 Q. And if you look at this April 1, 2009, sign-in sheet,  
21 what's the time that every single person signed in?

22 A. 7:30.

23 Q. Did every single person get to the CCI office at exactly  
24 7:30 a.m. on April 1, 2009?

25 A. I can't tell you if that is the case or not. It's almost

F5kWmgc6

Solimine

1 six years later.

2 Q. Well, do you believe that that is the case?

3 A. It's a strong possibility, yes.

4 Q. O.K. So there's a strong possibility that every single  
5 person arrived on April 1, 2009, at exactly 7:30 a.m., is that  
6 right?

7 A. Correct.

8 Q. Can we look at April 2. Did you sign this sheet as well?

9 A. I did.

10 Q. Did every single person arrive at 7:30 a.m. according to  
11 this sheet?

12 A. I can't attest to that to be the 100 percent truth. It's a  
13 possibility.

14 Q. Well, I'm asking. Does the time in say 7:30 a.m.?

15 A. It does. Yes, it does.

16 Q. Does this refresh your recollection that starting on April  
17 1, 2009, you told the men that they needed to sign in at 7:30  
18 a.m. every single day regardless of when they got in?

19 A. No.

20 Q. Let's look at April 3.

21 A. O.K. I see.

22 Q. What time did everybody sign in on April 3?

23 A. 7:30.

24 Q. Let's look at April 4.

25 A. Eight a.m.

F5kWmgc6

Solimine

1 Q. April 4 appears to be a day that's different?

2 A. Yeah. Is that --

3 Q. Only two people signed in that day, correct?

4 A. It's possible it's a weekend.

5 Q. Let's look at April 5 -- sixth. Excuse me. What time did  
6 everybody sign in on April 6?

7 A. 7:30.

8 Q. Let's look at April 7. What time did everybody except for  
9 Ariel Peniche sign in on April 7?

10 A. Everybody signed in for 7:30. 7:30, except for Ariel  
11 Peniche.

12 Q. Now let's look at April 8. What time did every single  
13 person sign in?

14 A. 7:30.

15 Q. Now, does this refresh your recollection that you told the  
16 men that they were supposed to sign in at 7:30 a.m. every  
17 single day?

18 A. No. I mean, it doesn't remind me of anything. I mean, we  
19 have start time of 7:30. It's just a document with times on  
20 it. I don't know what was said back on April 8 of 2009.

21 Q. So you don't remember telling the men at sometime prior to  
22 April 8 of 2009 that the men are supposed to sign in at 7:30  
23 a.m.?

24 A. No.

25 Q. If we can go to Exhibit 70, please, and if we can go to

F5kWmgc6

Solimine

1 February, excuse me, May 26, towards the end of the month.

2 Now, looking at May 26, 2009, what time did every man seem to  
3 sign in?

4 A. Eight a.m.

5 Q. Can we look at May 29. Looking at May 29, what time did  
6 everyone seem to sign in?

7 A. Eight a.m.

8 Q. Now looking at Exhibit 71, again, this appears to be a day  
9 where there's fewer people working. Did you have an  
10 understanding of why there would be a day when only four people  
11 were working?

12 A. It's a possibility that it may be a weekend. I don't know  
13 what day six, June 1 of '09 is.

14 Q. Go to the next day and the next, June 2. What's the date  
15 that everybody signed in on June 2?

16 A. Sorry?

17 Q. Excuse me. What's the time that everybody signed in?

18 A. Eight a.m.

19 Q. Let's go to June 3. What's the time that everybody signed  
20 in on June 3?

21 A. Eight a.m.

22 Q. June 4. What's the time everybody signed in on June 4?

23 A. Eight a.m.

24 Q. June 5. What's the time everyone signed in on June 5?

25 A. Eight a.m.



1 Q. Did you tell the men that starting on May 26, 2009, they  
2 were supposed to sign in at 8 a.m. every single day?

3 A. I don't recall telling them that. I'm sure there might  
4 have been, there may have been a change of procedure of some  
5 sort.

6 Q. You were responsible for setting the procedure for the CCI  
7 office, correct?

8 A. That is correct.

9 Q. So if there was a change of procedure, you would be the  
10 person who would change the procedure, correct?

11 A. That's correct.

12 Q. And did you change the procedure for the CCI office saying  
13 that every man was supposed to sign in at 8 a.m.?

14 A. That is correct.

15 Q. When did you tell the men that they needed to start signing  
16 in at 8 a.m.?

17 A. I'm sorry, but I don't recall the exact date.

18 Q. So did you tell the men that they were supposed to sign out  
19 every single day at 4:30 p.m.?

20 A. Yes.

21 Q. Do you know if men were in the office doing work before 8  
22 a.m.?

23 A. No.

24 Q. You don't know if men were doing work before 8 a.m.?

25 A. No. They weren't required to do work before 8 a.m.

1 Q. Sorry. I asked you a different question. Do you know if,  
2 did you ever see any of the plumbers who worked for CCI in the  
3 CCI offices before 8 a.m.?

4 A. Yes.

5 Q. And did you see any of them pick up their CN3 handheld  
6 computers before 8 a.m.?

7 A. Yes.

8 Q. Did you see them pick up their route sheets before 8 a.m.?

9 A. Yes.

10 Q. Did you see them pick up meters and load them onto their  
11 truck?

12 A. Yes.

13 Q. Did you see them do paperwork in the mornings?

14 A. No.

15 Q. But you did see them pick up their route sheets, pick up  
16 their CN3s and load their trucks before 8 a.m. in the morning,  
17 correct?

18 A. No.

19 Q. You just testified a few moments ago you saw men loading --

20 THE COURT: Sustained.

21 Q. Did you have morning meetings?

22 A. Yes.

23 Q. And those morning meetings were called tailgates, correct?

24 A. Yes.

25 Q. And did those tailgates start before 8 a.m.?

1 A. Sometimes they did.

2 Q. But the men had to sign in at 8 a.m. every single day even  
3 if they came early for a tailgate, correct?

4 A. Yes.

5 Q. And the men had to sign in early every single day even if  
6 they were loading their trucks before 8 a.m., correct?

7 A. They weren't loading their trucks.

8 Q. Nobody ever loaded their trucks in the morning?

9 A. The trucks were loaded the night before.

10 Q. Sorry. My question is a little bit different. Did anybody  
11 ever load their trucks in the morning?

12 A. Yes.

13 Q. And they were instructed to sign in at 8 a.m. every single  
14 morning even if they were loading their trucks before 8 a.m.,  
15 correct?

16 A. Yes.

17 Q. And you expected the men to be at their very first job in  
18 the field at 8 a.m., correct?

19 A. That was a first requirement. That changed.

20 Q. That was a requirement that for a time men had to be out in  
21 the field by 8 a.m.?

22 A. By 8 a.m., yes.

23 Q. In order to be in the field by 8 a.m., they had to drive  
24 from the CCI office to the place where they would be working in  
25 the field, correct?

1 A. Yes.

2 Q. On average, how long would it take a person -- sorry. Let  
3 me withdraw that question.

4 Did you ever go out in the field yourself?

5 A. Yes.

6 Q. And you went to visit the men in the field, correct?

7 A. Yes.

8 Q. And you did audit checks on men in the field, correct?

9 A. No, sir.

10 Q. On average, how long did it take you to drive to a location  
11 where you met a man in the field?

12 A. Fifteen, 20 minutes.

13 Q. So in order for a person to be at their first job by 8  
14 a.m., on average, they would have to leave at 7:40 or 7:45  
15 a.m., correct?

16 A. Yes.

17 Q. And they had to load their trucks before that, correct?

18 A. No.

19 Q. They had to pick up their CN3s before that?

20 A. Yes.

21 Q. They had to pick up their route sheets before then,  
22 correct?

23 A. Yes.

24 Q. And if they did not load their trucks the night before,  
25 they had to load up the trucks before then, correct?

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1 A. No. They were loaded the night before.

2 Q. Let me ask you a slightly different question. When a man  
3 would pick up his route sheet, would he see what meters he  
4 would be changing on that particular day?

5 A. Yes.

6 Q. Is it possible that a man when he looks at his route sheet  
7 realizes that there's certain meters that he's going to need  
8 for that day which are not already in that truck?

9 A. Yes, and that's exactly what I'm agreeing with here today.

10 Q. And so some men would have to go and get meters to load  
11 them into their trucks so that they could actually service  
12 those accounts, correct?

13 A. Specialty meters.

14 Q. Correct?

15 A. Appointment based.

16 Q. And you saw that happen, correct?

17 A. Yes.

18 Q. But every single day that you worked as general manager for  
19 CCI, you signed these time sheets --

20 A. Yeah.

21 Q. -- saying that the men started work at 8 a.m., correct?

22 A. Mm-hmm.

23 Q. Right?

24 A. Yes.

25 Q. That was false?

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1 A. Is that a question or a statement?

2 Q. Yes. That was incorrect; the men started work before 8  
3 a.m., didn't they?

4 A. On occasion, if there was a specialty meter that was  
5 needed, they were asked to put it in their truck.

6 Q. My question is different.

7 A. I, I --

8 Q. The men started work every single day before 8 a.m.?

9 A. No, no, no.

10 Q. Let me --

11 A. No. Not every day. no.

12 Q. Some men started work before 8 a.m. --

13 A. Some.

14 Q. But none of these time sheets reflect the men working  
15 before 8 a.m., correct?

16 A. I've only seen a number of them.

17 Q. O.K. Let's go to Exhibit 72. And let's just go to the  
18 first page of Exhibit 72. What time did every man sign in on  
19 July 1, 2009?

20 A. Eight a.m.

21 Q. Let's go to Exhibit 73. Does this appear to be a weekend  
22 day, august 1, 2009?

23 A. It's a possibility. We worked staggered shifts, so it  
24 could be a week, a weekday. I'm not really sure.

25 Q. We can go back for one moment. This is August 1, 2009,

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1 correct?

2 A. Yes.

3 Q. There appear to be only three people working that day,  
4 correct?

5 A. Yes.

6 Q. And of those three people, they all signed in at 10 a.m.,  
7 correct?

8 A. Yes.

9 Q. But they were signing out at 6:30 p.m., correct?

10 A. Yes.

11 Q. You told them that if they were signing in at 10 a.m., they  
12 had to sign out at 6:30 p.m., correct?

13 A. That was their shift, yes.

14 Q. But the men would be in the office before 10 a.m. on those  
15 days as well to pick up their CN3s, correct?

16 A. Yes.

17 Q. Let's go to the next day in August, the next one. This is  
18 August 3. What time did everyone sign in on August 3?

19 A. Eight a.m.

20 Q. Can you think of a single day where you signed the time  
21 sheet after May 26, 2009, where you authorized men to sign in  
22 before 8 a.m.?

23 A. No.

24 Q. And, in fact, if some men did sign in before 8 a.m., you  
25 told them they had to change it to 8 a.m., correct?

1 A. No.

2 Q. Can we go back to Exhibit 70. Looking at May 29, 2009, do  
3 you see that?

4 A. I do.

5 Q. Now, that wasn't signed by you, correct?

6 A. No. That's, that signature is Crystal Kinney.

7 Q. She was acting on behalf of you, as you said before, right?

8 A. I believe so, yes.

9 Q. Looking at this time sheet, does it appear to you that any  
10 of the 8 a.m. sign-ins have been altered?

11 A. Other than the dark signature for Anthony Gandolfo, that's  
12 the only one that really appears to be.

13 MR. BHANDARI: O.K. Why don't we zoom in on Anthony  
14 Buffalino. Zoom in a little bit more.

15 Q. Does it appear to you that Anthony Buffalino's original  
16 time that he signed in was 7:00, but it was changed to eight?

17 A. No.

18 MR. BHANDARI: Zoom out a little bit.

19 A. I'm sorry. Which line is Anthony? Can I see?

20 Q. Very first one.

21 A. Top one, no, it doesn't appear that way to me.

22 Q. Doesn't appear that that's changed? Looking at Charles  
23 Buffalino, does it appear that Charles Buffalino's time was  
24 changed?

25 A. That one seems a little bit off, yes.



1 Q. And what time does it appear was originally written in for  
2 Charles Buffalino?

3 A. It appears it may be a seven.

4 Q. Now going to the next page of May 29, does it appear that  
5 Michael McGlone's time was originally a different time than 8  
6 a.m.?

7 A. It appears that way.

8 Q. Does it appear that Ariel Peniche's time was originally a  
9 different time?

10 A. It appears that way.

11 Q. Does this refresh your recollection that you told the men  
12 that they needed to change their time to 8 a.m. even if they  
13 got in early?

14 A. No, but this document states that it was changed.

15 Q. Did you instruct Ms. Kinney to change the times?

16 A. I don't recall telling her to change the times, no.

17 Q. Did you change the times yourself?

18 A. No. No. I didn't change the times.

19 Q. So it's possible that you instructed the men to do it or  
20 it's possible that you instructed Ms. Kinney to do it, correct.

21 A. It's possible, but I don't recall.

22 THE COURT: Is your best recollection that you don't  
23 know one way or the other, or is your best recollection that  
24 you did not do that?

25 THE WITNESS: No. It's my best recollection that I --

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1 I'm sorry, your Honor. What was the first one?

2 THE COURT: Is it your best recollection that you  
3 don't recall one way or the other?

4 THE WITNESS: Yes.

5 THE COURT: Or is it your best recollection that you  
6 did not do it?

7 THE WITNESS: I don't recall one way or the other.

8 THE COURT: O.K.

9 BY MR. BHANDARI:

10 Q. But for yourself, you recall that you didn't do it  
11 yourself, correct?

12 A. On this sheet, it appears that I didn't, since I didn't  
13 sign it. I wasn't there.

14 Q. Now, let's talk about your job as general manager. You had  
15 superiors, correct?

16 A. I did.

17 Q. And your superiors included Mark Maguire and Tim Wertz,  
18 correct?

19 A. Mike Maguire.

20 MR. BHANDARI: Sorry. Baseball. I apologize.

21 Q. Your superiors included Michael Maguire and Tim Wertz, is  
22 that correct?

23 A. They were executives of the company, yes.

24 Q. And they were your superiors, correct?

25 A. Tim Wertz was.

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1 Q. And Mike Maguire was also, correct?

2 A. No, he was not.

3 Q. Did you give a deposition? Do you recall being deposed by  
4 Ms. Dodson?

5 A. I do.

6 Q. And in that deposition, did you swear to tell the truth?

7 A. I sure did.

8 Q. And did you do your best to tell the truth?

9 A. I believe so, yes.

10 Q. I would like to show you a portion of the deposition.

11 MR. BHANDARI: Your Honor, may I present the witness  
12 with a binder.

13 THE COURT: Yes.

14 Q. Your deposition is in two parts. I'm directing you to the  
15 first half, which is depo tran 1, and I direct you to page 27,  
16 I guess.

17 A. Yes.

18 Q. I'd like --

19 A. You said page 27, right?

20 Q. Page 27.

21 MR. BHANDARI: Your Honor, I'm going to direct him to  
22 read lines 4 through 11.

23 THE WITNESS: Start reading?

24 THE COURT: No. Sustained.

25 MR. BHANDARI: O.K.

1 THE COURT: I apparently have been wasting my breath  
2 with both counsel in this case. If you want to put a question  
3 to him and he gives an answer and only if he gives an answer  
4 that is inconsistent with the deposition can you even get to  
5 the deposition. This is consistent with the other flaw in your  
6 questioning, which is going on now for days, where you say does  
7 that, pointing to X, Y, Z, refresh your recollection as such,  
8 when he never indicated a failure of recollection as to such.  
9 I am disappointed that the rules of evidence somehow don't seem  
10 to be followed by either side in this case, but it's going to  
11 be followed starting right now.

12 MR. BHANDARI: O.K.

13 Q. Was Mike Maguire one of your supervisors in the chain of  
14 command at CCI?

15 A. No.

16 MR. BHANDARI: Your Honor, I would like to direct the  
17 witness to review lines 4 through 11 of page 27.

18 THE COURT: I'm sorry. Who would be the people you  
19 considered to be your superiors in the chain of command at that  
20 time?

21 THE WITNESS: I considered Tim Wertz, Dave Stetz as my  
22 supervisors who I answer to, my bosses, my direct point of  
23 contacts.

24 THE COURT: Anyone else?

25 THE WITNESS: Clarence Prichard, Rob Stillwell, Mike

1 Maguire. They were executives of the company.

2 THE COURT: Sustained. Put another question.

3 BY MR. BHANDARI:

4 Q. So Tim Wertz was one of your supervisors, correct?

5 A. He was my boss.

6 Q. And Mike Maguire is one of the superiors in the chain of  
7 command above you, correct?

8 A. He's an executive of the company.

9 Q. And if you were to fire one of the field techs, one of the  
10 plumbers who was working on the AMR project --

11 A. Yes.

12 Q. -- you couldn't do that by yourself, right?

13 A. Certainly not, no.

14 Q. You needed to get approval from Tim Wertz, correct?

15 A. No.

16 Q. You needed to get approval from Mike Maguire?

17 A. No.

18 Q. You needed to get approval from Dave Stetz?

19 A. Yes.

20 Q. Or Tim Wertz?

21 A. Yes.

22 Q. Or Mike Maguire?

23 A. No.

24 MR. BHANDARI: I'd like to direct the Court to page  
25 129 of the second volume of Mr. Solimine's transcript. Now,

1 the part, the section that is directly relevant is on page 130,  
2 from lines 1 through 13. But in order to understand what those  
3 lines mean, you may have to read from page 129, line 23.

4 THE COURT: Excuse me. He's not talking to you. He's  
5 talking to me. Sustained.

6 BY MR. BHANDARI:

7 Q. So one of the people you were to call potentially if you  
8 were going to fire one of the plumbers on the job was Mike  
9 Maguire, correct?

10 A. No.

11 Q. Did you ever testify previously --

12 THE COURT: Sustained.

13 MR. BHANDARI: Your Honor, may I approach the bench.

14 THE COURT: Yes.

15 (Continued on next page)  
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1 (At the sidebar)

2 THE COURT: No matter what you were going to say in  
3 the rest of that question, it was improper. You were about to  
4 say "did you ever testify" blank. I've already explained that  
5 that's not the way you can properly ask questions. I told that  
6 to your adversary as well. That's not the proper form of a  
7 question when you're impeaching with a deposition, and we had a  
8 very good example of this a minute ago. He had testified that  
9 one of his superiors was Mike Maguire. You put the question,  
10 Was one of your supervisors Mike Maguire, he said no, and then  
11 you sought to impeach him with that testimony, whereas when,  
12 after I sustained it, you put the question about superiors, he  
13 then said yes, Mike Maguire was one of his superiors in the  
14 sense that he was an executive higher up. So there was no  
15 inconsistency. I have yet to hear any inconsistency about what  
16 you're inquiring now, but more importantly, I have yet to hear  
17 in the immediate question you asked for a sidebar on a properly  
18 framed question.

19 MR. BHANDARI: I think the inconsistency is that he's  
20 asked here, "Did you run --"

21 THE COURT: Page?

22 MR. BHANDARI: Page 129, line 23: "Did you run the  
23 termination of anybody in corporate?" He says, "I believe so,  
24 yes." And it says, "Even if you don't remember specifically  
25 you spoke to who were the pool of people at corporate you would

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1 have called about that," and then he says, "Forgive me --"

2 THE COURT: Which, by the way, was not objected to as  
3 to form, so that remains a proper question even though it's  
4 blatantly improper as to form. Anyway, there was no such  
5 objection, so the answer was, "Forgive me. I'm not trying to  
6 be rude. We're talking about a lot of years here, a lot of  
7 different positions have come in and out. So I don't know. It  
8 varies. I mean director of administration. It might have been  
9 David Stetz. It might have been Tim Wertz. It might have been  
10 Mike Maguire. I don't think --"

11 MR. BHANDARI: Can I --

12 THE COURT: "-- people, we have a way of doing things  
13 so, you know, I don't know who was in a position at the time to  
14 really pinpoint it."

15 MR. BHANDARI: Can I --

16 THE COURT: So what you have, on any theory, is he's  
17 saying I don't remember, I don't remember, I don't remember,  
18 and you want to introduce it to show that it's inconsistent  
19 with his answering the specific question about whether Mike  
20 Maguire approved the firing.

21 MR. BHANDARI: No. Might have been one of the people  
22 you speak to.

23 THE COURT: I don't see why "might have" is of any  
24 evidentiary relevance.

25 MR. BHANDARI: My read of this is that is the pool of



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1 people. He doesn't know who it was, but those three people are  
2 people he could have called for approval, and that shows they  
3 had the supervisory authority.

4 THE COURT: I'll put some questions to the witness to  
5 move this along.

6 MR. BHANDARI: Thank you.

7 (Continued on next page)

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1 (In open court)

2 THE COURT: Before you were able to terminate someone,  
3 you had to seek approval?

4 THE WITNESS: Yes, sir.

5 THE COURT: One of the people you terminated was Brian  
6 Nicholas?

7 THE WITNESS: Yes, sir.

8 THE COURT: Another person was Rocco Ceparano, is that  
9 right?

10 THE WITNESS: No, Rocco Ceparano was not terminated.

11 THE COURT: I'm sorry. Mr. Nicholas was fired because  
12 he got into a fight?

13 THE WITNESS: Yes, sir.

14 THE COURT: And the person he got into a fight with  
15 was Mr. Ceparano?

16 THE WITNESS: No. Mr. Ceparano was the one who  
17 witnessed Mr. Nicholas get into a fight at the facility.

18 THE COURT: Very good. All right. So, after you  
19 heard about Mr. Nicholas getting into a fight, you were the one  
20 who actually terminated him.

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you remember who you ran that by before  
23 you did so?

24 THE WITNESS: Our corporate office, and in our  
25 corporates office we have a director of administration.

1 THE COURT: Wait a minute. Do you remember  
2 specifically who you --

3 THE WITNESS: No, sir, I don't.

4 THE COURT: So you're just saying it could have been,  
5 what you recollect is you had to run it by someone.

6 THE WITNESS: Yes.

7 THE COURT: You don't recollect who it was. Yes?

8 THE WITNESS: Yes.

9 THE COURT: But it had to be someone in the corporate  
10 office.

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Who were the people at that  
13 time in the corporate office?

14 THE WITNESS: I don't remember the day. It could have  
15 been Tim Morris, it could have been David Stetz, it could have  
16 been Ann Wheeler, it could have been a supervisor of mine.  
17 Again --

18 THE COURT: The answer to my question is you don't  
19 remember.

20 THE WITNESS: No, I don't remember.

21 THE COURT: Sustained.

22 BY MR. BHANDARI:

23 Q. At the end of the day, what time would you leave the CCI  
24 offices at the end of the day?

25 A. It depended. My schedule fluctuated daily.

1 Q. What is kind of the range of times that would be a normal  
2 range of times?

3 A. Five. Sometimes six. Sometimes three. Again, it varied.

4 Q. So sometimes you would leave the office at 5 o'clock?

5 A. Yes, sir.

6 Q. Sometimes you would leave at 6 o'clock?

7 A. Yes, sir.

8 Q. When you would leave at 5 o'clock, would you sometimes see  
9 plumbers in the office?

10 A. Absolutely.

11 Q. Would you sometimes see plumbers in the office at  
12 6 o'clock?

13 A. Rarely.

14 Q. Sometimes you would?

15 A. Sometimes.

16 Q. When you would see plumbers in the office at 5 o'clock,  
17 would you see them unloading their trucks, putting old meters  
18 into bins at the CCI offices?

19 A. Sometimes.

20 Q. Would you see them filling out paperwork?

21 A. Sometimes.

22 Q. Would you see them reloading their truck at the end of the  
23 day?

24 A. Sometimes, yes. Well, yes, because we would load our  
25 trucks at the end of the day, so yes.

1 Q. Would you authorize overtime for people who were loading  
2 their trucks at the end of the day?

3 A. No, not if it fell within their shift, no.

4 Q. Would you authorize overtime for people who were unloading  
5 their trucks, getting rid of meters at the end of the day?

6 A. Not if it is within their shift, no.

7 Q. You told people to sign out regularly at 4:30.

8 A. That was the end of their shift, yes.

9 Q. If it was 5 p.m. and you saw people unloading their truck,  
10 would you authorize overtime for that?

11 A. If they were there past the hour, then yes, I would assume  
12 yes.

13 Q. You would assume yes?

14 A. Yes.

15 Q. So I'll ask you specifically what you recall. Do you  
16 recall authorizing overtime at the end of the day for people  
17 who were unloading their trucks after 4:30 p.m.?

18 A. No.

19 Q. Do you recall authorizing overtime at the end of the day  
20 for people who were in the CCI office doing paperwork after  
21 4:30 p.m.?

22 A. No.

23 Q. Do you recall authorizing overtime for people who were  
24 loading up their truck at the end of the day after 4:30 p.m.?

25 A. No.

1 Q. At the beginning of the AMR project, people were being paid  
2 under -- people were being paid with the assumption -- excuse  
3 me. Withdrawn.

4 The normal shift at the beginning of the AMR project,  
5 let's say starting, let's take June of 2009 for example.

6 A. Okay.

7 Q. The shift in June of 2009 would normally be eight to  
8 4:30 p.m., correct?

9 A. Okay, yes.

10 Q. That's an eight-and-a-half-hour shift, correct?

11 A. That's correct.

12 Q. So in order for overtime to not have to be paid, people  
13 would have to take a half hour lunch, correct?

14 A. Yes, they are required to. Yes.

15 Q. You were not monitoring whether or not people were taking a  
16 half hour lunch at the beginning of the project, correct?

17 A. No, sir.

18 Q. In fact, did some people tell you that they were not taking  
19 half hour lunches?

20 A. No.

21 Q. Did anybody ever tell you that Rocco Ceparano just had  
22 Gatorade and gummy bears during the day and didn't eat lunch?

23 A. No. I don't recall that.

24 Q. No one ever told you that?

25 A. I don't recall gummy bears or Gatorades, no.

1 Q. Do you remember talking to Joe Frangiosa when he told you  
2 he wasn't taking a half hour lunch every single day?

3 A. No.

4 Q. Did you ever tell Joe Frangiosa that he could afford to  
5 lose a few pounds?

6 A. No. I'm not a skinny person myself. No. I have feelings  
7 as well.

8 Q. You never said that?

9 A. No.

10 Q. Do you recall speaking to anybody at CCI about whether or  
11 not they were actually taking their lunch breaks or they were  
12 working?

13 A. No.

14 Q. Would you call people, would you call the plumbers when  
15 they were out in the field during the day?

16 A. Yes.

17 Q. Would you ever tell them stop, you need to take a half hour  
18 lunch right now?

19 A. No.

20 Q. Did you ever at any point tell them that there was going to  
21 be a mandatory time when lunch had to be taken?

22 A. No.

23 Q. Did you ever at any point tell them that if they were not  
24 taking a half hour lunch, they would be suspended?

25 A. I don't recall that. That's pretty -- that's pretty

1 strict.

2 Q. But, there were other CCI policies that you did suspend  
3 people for not following, correct?

4 A. Possibly, yes.

5 Q. For example, you went out in the field to do safety checks,  
6 correct?

7 A. Yes, sir.

8 Q. A safety check meant to see whether or not people were  
9 wearing the proper protective equipment, correct?

10 MR. BLANK: Objection. Irrelevant.

11 MR. BHANDARI: Do you want me to explain, your Honor?

12 THE COURT: No. Overruled. You may answer the  
13 question.

14 MR. BHANDARI: Can you please read back the question?

15 THE COURT: The question was: "A safety check meant to  
16 see whether or not people were wearing the proper protective  
17 equipment, correct?"

18 A. Yes.

19 Q. You fired somebody for not wearing the proper protective  
20 equipment, correct?

21 A. Yes.

22 Q. You fired Jesse DiMirco for that reason, correct?

23 A. Yes.

24 MR. WITTELS: Judge, I --

25 MR. BHANDARI: I withdraw that question.



1 Q. You never fired anyone for not taking a lunch break,  
2 correct?

3 A. No.

4 Q. In fact, well, let me step back for a second. You said  
5 that you had total responsibility for the profit and loss of  
6 the AMR project, correct?

7 MR. BLANK: Object. Asked and answered.

8 MR. BHANDARI: It is a foundational question, your  
9 Honor.

10 THE COURT: I'll allow it.

11 Q. You testified that you had total responsibility for the  
12 profit and loss of the AMR project, correct?

13 A. Yes.

14 Q. You were responsible, and you were being evaluated, your  
15 performance was evaluated on whether or not the AMR project was  
16 profitable, correct?

17 A. Yes.

18 Q. One way to reduce the costs of the AMR project would be to  
19 reduce labor costs, correct?

20 A. No.

21 Q. Well, if labor costs were lower, then the total costs of  
22 the project would be lower, correct?

23 THE COURT: Sustained.

24 Q. Were you ever given a compliment by the CCI corporate  
25 office that the AMR project was in the black?

1 MR. WITTELS: Objection, relevance.

2 MR. BHANDARI: This is --

3 THE COURT: Overruled.

4 Q. Were you ever given a compliment by the CCI corporate  
5 offices that the AMR project was in the black?

6 A. Can you please specify what you mean by "in the black"?

7 MR. WITTELS: I was going to object as vague.

8 THE COURT: Excuse me?

9 MR. WITTELS: Vague.

10 THE COURT: Overruled.

11 Q. You can answer the question. Were you ever given that  
12 compliment?

13 A. Yes, we were profitable.

14 Q. It was important to you that the AMR project was  
15 profitable, correct?

16 A. Yes.

17 Q. The way it was profitable is if the men went to more  
18 appointments during the day and swapped more meters and  
19 installed more MTUs, correct?

20 THE COURT: Sustained.

21 Q. Was one way to increase profits by having the men swap more  
22 meters during the day?

23 THE COURT: Sustained.

24 Q. Did you care about what the productivity of the men was?

25 A. Yes.

1 Q. During the day, would you ask the men what their numbers  
2 were?

3 A. Yes.

4 Q. Did you ever tell the men they would be fired if their  
5 productivity was not high enough?

6 A. No.

7 Q. You never told men that their productivity mattered?

8 MR. BLANK: Objection. Vague.

9 THE COURT: Sustained.

10 Q. You never told men that they would be terminated from CCI  
11 if their productivity was too low?

12 MR. BLANK: Objection. Vague.

13 THE COURT: Overruled.

14 A. Can you please repeat that question?

15 Q. Sure. Did you ever tell men that they would be fired from  
16 CCI if their productivity was too low?

17 A. No. Can I explain?

18 Q. Yes.

19 THE COURT: No.

20 Q. Oh.

21 MR. BHANDARI: I can't ask?

22 THE COURT: No. His counsel will ask if he wants, if  
23 we ever get to his counsel.

24 Q. Without using those exact words, did you ever talk to men  
25 and discipline them -- excuse me. Withdrawn.

1 Did you ever talk to men and tell them that it was  
2 important that they had to get their productivity up?

3 A. Yes.

4 Q. Did you ever tell men that they should work harder during  
5 the day when you would call them to get their numbers up?

6 A. Yes.

7 Q. Later in the CCI project -- excuse me. Later in the AMR  
8 project, you got a directive from CCI corporate saying that the  
9 men needed to start recording their lunch breaks, correct?

10 A. Yes, sir.

11 Q. Who at the CCI corporate office told you that this needed  
12 to be the new policy?

13 A. I believe Ann Wheeler.

14 Q. Did you talk to Tim Wertz about it?

15 A. He was probably involved in a conference call or a chain of  
16 e-mails or whatever. But, you know, more or less it was  
17 directed by HR.

18 Q. So, you had talked to Tim Wertz once a week, at least,  
19 correct?

20 A. Back then I did.

21 Q. How frequently would you talk to Tim Wertz back then?

22 A. Pretty frequently.

23 Q. How many times in a week?

24 A. At least once, twice.

25 Q. How frequently would you speak to Michael Maguire?

1 A. Biweekly.

2 Q. You would speak to Tim Wertz about any complaints that the  
3 men had, correct?

4 A. Anything that was worth bringing to the president, yes.

5 Q. You thought that any complaints that were made by the men  
6 related to overtime would be a complaint worth bringing to the  
7 president, correct?

8 A. Absolutely.

9 Q. What's that?

10 A. Absolutely.

11 Q. Mike McGlone complained to you about not getting paid for  
12 the time he worked in the morning and in the afternoon?

13 A. No.

14 Q. He never complained about that?

15 A. No.

16 Q. Joe Frangiosa complained to you about not getting paid for  
17 the work he was doing in the morning and in the afternoons,  
18 correct?

19 A. No.

20 Q. Did any of the men ever complain to you about having to  
21 sign in at 8 a.m. even though they were working before 7 a.m.?

22 A. Not that I recall.

23 MR. WITTELS: Object. That's not what the  
24 testimony --

25 THE COURT: Overruled. The answer will stand.

1 A. Not that I recall, no.

2 Q. Did any of the men ever complain to you that you did not  
3 authorize overtime when they were working after 4:30 p.m.?

4 A. No.

5 Q. Did you ever suspend Robert Schantz?

6 A. I believe yes, I did once.

7 Q. You suspended Robert Schantz because he spoke back to you,  
8 is that correct?

9 A. He was insubordinate during a meeting, yes.

10 Q. At that meeting you were screaming at the men about their  
11 numbers for a particular day?

12 A. I don't know if I was screaming, but I was definitely  
13 probably driving a point.

14 Q. You were driving that point by raising your voice?

15 A. I can't say if I raised my voice or not. But I'm sure  
16 there had to be an issue. I do remember the incident between  
17 Schantz and I though.

18 Q. That was because on a Saturday you thought that the numbers  
19 of men who were working on a Saturday weren't high enough,  
20 correct?

21 A. I can't recall if that was the specific incident. I  
22 remember just the incident that occurred between Robert Schantz  
23 and I.

24 MR. BHANDARI: I would like to have this marked as  
25 Plaintiff's Exhibit 130. May I approach, your Honor?

1 THE COURT: Yes.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is this document?

5 A. This is a standard incident report form.

6 Q. Did you fill out this incident report form?

7 A. That is my handwriting. I believe so, yeah.

8 Q. It is dated September 21, 2010?

9 A. Hmm-hmm.

10 Q. Yes?

11 A. Yes.

12 MR. BHANDARI: Your Honor, I'd like to have Exhibit  
13 130 entered into evidence.

14 MR. WITTELS: Judge, I am going to object. There has  
15 already been a ruling regarding employee discipline.

16 THE COURT: Overruled. The document is received.

17 (Plaintiff's Exhibit 130 received in evidence)

18 MR. BHANDARI: May I hand this to the jury?

19 THE COURT: Yes. You know. I think we need to have a  
20 side bar right now.

21 (Continued on next page)

1 (At the sidebar)

2 THE COURT: Now, you have jointly and severally  
3 created two time problems, because no one brought to the  
4 attention of this Court until almost 4 p.m. today the fact that  
5 this witness was not otherwise available at least in the next  
6 couple of days. When did you first find out that he was not  
7 otherwise available?

8 MR. BLANK: The answer is, I knew he was unavailable  
9 on this coming Friday because of his wife's surgery, and I  
10 think that was -- I learned this afternoon that his wife is  
11 being prepped for surgery -- prepped for surgery tomorrow.

12 THE COURT: When tomorrow?

13 MR. BLANK: I don't have the exact time.

14 THE COURT: We'll find out in a minute. When did you  
15 bring that to anyone's attention?

16 MR. BLANK: Immediately when I found out.

17 THE COURT: Which is when?

18 MR. WITTELS: When we took our afternoon break.

19 THE COURT: So, I have struggled to move this along,  
20 but, this is a meaningful witness, plaintiffs' counsel has a  
21 right to have his full time with this witness, and it seems  
22 clear that he's not going to finish before five. I'm not going  
23 to keep the jury beyond five. I gave them a pledge when we  
24 first swore them in they would never go beyond five. I had  
25 told them they would sit today until 4:30, so we're already



1 well beyond that time, and we are not going to sit beyond five.

2 We also have the problem that when I said we would  
3 interrupt the other witness to accommodate this situation, no  
4 one said to me, well, Judge, we're not going to be able to  
5 finish this witness in an hour. Something I would have  
6 expected from plaintiffs' counsel, and certainly might have  
7 been raised by defense counsel.

8 So, in short, gentlemen, you have created a complete  
9 bollocks of your own making.

10 So what I'm going to do is first excuse the jury now.  
11 We will find out whether this witness is available tomorrow  
12 morning or not. We will find out the availability of the other  
13 witness, and we will then proceed accordingly.

14 (Continued on next page)  
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25

1 (In open court)

2 THE COURT: Ladies and gentlemen, we had promised you  
3 that you would leave at 4:30 today. Exactly right now. So,  
4 we're going to end for today. To make it up to you, because  
5 I'm sorry it went a bit longer than we intended, we will start  
6 at 10 o'clock tomorrow rather than 9:30. On the other hand, it  
7 will be a real 10 o'clock, not one of my phony ones.

8 So, please be sure to be in the jury room by  
9 10 o'clock and we will see you tomorrow.

10 I do want to note for the record that against all my  
11 principles, I'm actually going to a Mets game tonight. So,  
12 we'll see you tomorrow at 10 o'clock.

13 (Jury excused)

14 THE COURT: Mr. Solimine, what availability do you  
15 have tomorrow? I understand your wife is having surgery on  
16 Friday and they're prepping her tomorrow. What time are they  
17 prepping her?

18 THE WITNESS: They will be prepping her around 10:30.

19 THE COURT: In the morning?

20 THE WITNESS: Yes.

21 THE COURT: Where is this?

22 THE WITNESS: Methodist Hospital in Downtown Brooklyn.

23 THE COURT: Do you have any idea how long that will  
24 take?

25 THE WITNESS: It's just pretesting, so it is blood

1 work. I have to take her there and stuff like that. As I told  
2 my attorney, I can be here tomorrow afternoon if need be.

3 THE COURT: You can be here at say 2 o'clock tomorrow?

4 THE WITNESS: Sure. Yeah. As long as -- yeah, if  
5 that works for you guys.

6 THE COURT: How much longer do you have on his direct?

7 MR. BHANDARI: Approximately a half hour, 20 minutes.

8 THE COURT: And cross?

9 MR. BLANK: I'm guessing about an hour.

10 MR. BHANDARI: After that I may have more. They might  
11 go into things that I didn't, so I may have a more substantial  
12 redirect than normal.

13 THE COURT: We're going to start this witness tomorrow  
14 at 2 o'clock. His testimony, no matter what, will end by  
15 5 o'clock tomorrow. And I guarantee you that I will enforce  
16 that to the hilt, so bear that in mind. If I hear any  
17 questions that I think are unnecessary, a waste of time, I will  
18 sua sponte sustain the Court's own objection to them and move  
19 things along.

20 So tonight both sides should pare down their questions  
21 to what they are sure is directly relevant and not window  
22 dressing.

23 MR. BHANDARI: Your Honor, I have one request. Can I  
24 get an instruction from the Court that he's not supposed to  
25 talk to the attorneys since he is on the stand right now and

1 should not be speaking to any attorneys.

2 THE COURT: Yes. I have the great pleasure, as I'm  
3 sure it's yours, of instructing you not to talk to any attorney  
4 tonight. So we'll see you at 2 o'clock tomorrow.

5 THE WITNESS: Thank you.

6 (Witness not present)

7 THE COURT: Let's get the other witness back.

8 MR. BHANDARI: Mr. Frangiosa.

9 THE COURT: Thank you for bearing -- please be seated.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you for bearing with these delays.  
12 What is your availability tomorrow morning?

13 THE WITNESS: I'm starting a new project for a new  
14 company, so I have to be there. I'm going to be a foreman on  
15 the project at Baruch College.

16 THE COURT: Okay. What about Friday?

17 THE WITNESS: Same thing, your Honor. My work shift  
18 is from 7:30 to 3:30. I could ask, if you want that, maybe to  
19 see if I could leave early one afternoon to come.

20 THE COURT: I don't want to put you in an awkward  
21 spot. Who is your new employer?

22 THE WITNESS: PAR Plumbing.

23 THE COURT: Where are they located?

24 THE WITNESS: The main office is located out of  
25 Lynbrook, New York, but we also have a Manhattan office.

1 THE COURT: And the project itself is where?

2 THE WITNESS: At Baruch College, located at 13  
3 Lexington Avenue.

4 THE COURT: Not that far away from here.

5 THE WITNESS: No, sir, no.

6 THE COURT: I think what would be very helpful, and  
7 I'm happy to talk to anyone there if you want me to.

8 THE WITNESS: Okay.

9 THE COURT: Because I don't want to put you in an  
10 awkward spot at all.

11 THE WITNESS: Yes, sir.

12 THE COURT: But it would be very helpful if we could  
13 have you be here, say -- let me ask, how much more do you have  
14 on this witness?

15 MR. GLUNT: We don't have any more.

16 THE COURT: That's right. We just finished the  
17 direct.

18 MR. WITTELS: I hadn't started. I would say a half  
19 hour.

20 THE COURT: Half hour. All right. So, in that case,  
21 there may not even be a need. In an excess of caution, if you  
22 could be here on Friday at 3:30, that will give us an hour and  
23 a half. If you can't make it by 3:30, it sounds like you could  
24 make it by four.

25 THE WITNESS: I could ask for an early start time.

1 And hopefully they'll be able to grant it and I'll let the  
2 attorneys know and you'll know by tomorrow.

3 THE COURT: Be sure to fill out your time sheets  
4 appropriately.

5 THE WITNESS: Yes, sir, yes, sir. Yes, sir.

6 THE COURT: Anyway, okay. So you'll let the attorneys  
7 know, but either way we will see you, worst case at 4 o'clock  
8 on Friday, but hopefully at 3:30 or so on Friday.

9 THE WITNESS: Yes.

10 THE COURT: Very good.

11 MR. WITTELS: Judge, may I raise the same admonishment  
12 to this witness?

13 THE COURT: You shouldn't talk to any attorney between  
14 now and then.

15 MR. GLUNT: Except to confirm that he will be --

16 THE COURT: Other than to let them know your time.  
17 You can talk to them about that.

18 THE WITNESS: About just the time to confirm I'll be  
19 here Friday, but nothing else.

20 THE COURT: Not about the substance of the testimony.

21 THE WITNESS: Okay. Yes.

22 THE COURT: Very good. Thanks so much.

23 THE WITNESS: Thank you.

24 THE COURT: You may step down.

25 I'm not through with the attorneys, although they were

1 kind of hoping. Please be seated. I will explain to the jury  
2 tomorrow all this. Though it's unfortunate, I've learned from  
3 long experience that when witnesses are interrupted, while in  
4 some ways it hurts the flow a little bit. On the other hand,  
5 having a witness return later actually makes the witness more  
6 salient in the minds of the jury, so it is a equal tradeoff  
7 both ways. But I do want to make sure we don't have these  
8 problems in the future.

9 Who do we have for tomorrow morning?

10 MR. BHANDARI: Tomorrow the next witnesses were all  
11 CCI witnesses, so it will be Mr. Wertz, Mr. Maguire, and then  
12 Mr. Caton who is their next witness. So it seems like tomorrow  
13 will be all CCI witnesses.

14 THE COURT: We shouldn't have a problem.

15 MR. WITTELS: Judge, I have tried to be accommodating  
16 to the order that they would like to call witnesses, but you  
17 asked us to submit a witness list in order.

18 THE COURT: Yes.

19 MR. WITTELS: And there are one, two, three people  
20 above the CCI witnesses that we just seem to keep skipping  
21 over. And I don't know why.

22 THE COURT: What is the story there?

23 MR. BHANDARI: For scheduling reasons they were not  
24 able to come yesterday. One of them is available to come on  
25 Friday, and the other one cannot come until May 29. It is the

1 same sort of thing. They have these jobs -- it makes it  
2 difficult for us to schedule. So that's why, this was our  
3 intended order, this is how we wanted to put on our case. I  
4 told --

5 THE COURT: Here's what I think makes sense. I think  
6 tonight you have to construct a new witness order and you will  
7 be held to that order. So, contact whoever you need to  
8 contact, make sure you nailed it down. But, I think it isn't  
9 fair to the other side to have the order keep shifting.

10 Work it out tonight. And let them know.

11 MR. BHANDARI: Your Honor, I of course want to do  
12 that. It is very much -- to be fair, Mr. Wittels has been very  
13 cooperative. What he says is exactly right. We don't fault  
14 him at all.

15 However, this is a difficult 20-plaintiff case where  
16 everyone is an hourly worker for the most part. There are  
17 people in Texas, people in Pennsylvania, people in other  
18 states, we're doing our absolute best to try and get them and  
19 it makes things more difficult for us too.

20 THE COURT: Last I remember, they all affirmatively  
21 chose to be plaintiffs in this case.

22 MR. BHANDARI: Yes.

23 THE COURT: Was that because they were under the  
24 impression that the court would convene when it suited their  
25 convenience? Or did they have the more reasonable impression



1 that when their case went to trial, they would have to make  
2 accommodations so that the jury could hear the case in the  
3 order that both sides planned to present it?

4 I understand people have jobs. But I also understand  
5 that when you make the affirmative determination that you want  
6 to be a plaintiff in a lawsuit, and you're told it is going to  
7 trial on such-and-such a date, you don't say, oh, well, I'm  
8 sorry, but I've got this demanding boss and he says I got to be  
9 here.

10 I am happy if you want to send the U.S. marshals out  
11 and arrest each of your plaintiffs and bring them here. But I  
12 think that's not probably what you had in mind.

13 MR. BHANDARI: No, your Honor. All I'm saying is we  
14 are going to endeavor to do that. If there are problems with  
15 it, it is not because we're trying to mislead anyone. It is  
16 because we have problems with our plaintiffs.

17 We'll have to cross that bridge when we come to it.

18 THE COURT: On the other hand, I will say, and I'm  
19 glad counsel have been accommodating. If a witness is moved a  
20 day here or a day there, I doubt that it severely prejudices  
21 defense counsel because you would have prepared by then for the  
22 witness. If someone who is supposed to come a week from now is  
23 suddenly brought now, that's a different story. Then I agree  
24 it is the possibility of prejudice.

25 I also want to say, and I know I'm being a curmudgeon,

1 and of course it is what I love to be, but, many, many, many  
2 questions that have been put by both sides have not been in the  
3 form that complies with the rules of evidence, and more  
4 importantly, advances the jury's understanding.

5 I've yet to hear someone ask -- maybe I've missed  
6 it -- a question like, what happened next. Or what did he say  
7 to you and what did you say to him. Or any of the very  
8 straightforward questions that both comply with the rules and  
9 make it easy for the jury to follow.

10 I understand that both sides are deeply into the case,  
11 so, you are always strategizing and trying to make points and  
12 so forth, but my concern is with making things clear to the  
13 jury.

14 So, I would urge you to start asking questions that  
15 are no more than about six words long, that don't call for  
16 hearsay, that aren't leading, except in the rare circumstances  
17 where leading is permitted such as on cross or the one witness  
18 that we had, that don't require a lot of foundation background.

19 It will, in addition to having the side benefit of  
20 keeping my blood pressure down, it will make the whole  
21 testimony so much more clear to the jury, which is really my  
22 object. So, I take the great liberty of bringing that to your  
23 attention.

24 We'll see you tomorrow at 10 o'clock.

25 (Adjourned until May 21, 2015, at 10 a.m.)

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